

CUSTOMS COURTS ACT OF 1979

DECEMBER 7 (legislative day, NOVEMBER 29), 1979.—Ordered to be printed

Mr. DeCONCINI, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 1654]

The Committee on the Judiciary, to which was referred the bill (S. 1654) to improve the Federal judicial machinery by clarifying and revising certain provisions of title 28, United States Code, relating to the judiciary and judicial review of international trade matters, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE OF THE AMENDMENT

The bill as introduced and the amendment in the nature of a substitute are substantially similar. Since introduction, several provisions have been changed in order to more effectively carry out the purposes of the legislation.

PURPOSE OF THE BILL AS AMENDED

Enactment of the proposed Customs Courts Act of 1979 will bring necessary clarification and improvement to the laws governing the jurisdiction, powers and procedures of the United States Customs Court. As a result of modification to the Customs Court, certain necessary adjustments must also be made to the appellate court, the Court of Customs and Patent Appeals.

Under current law, the jurisdiction of the district courts over international trade matters is defined so as to encompass cases which are not within the exclusive jurisdiction of the United States Customs Court. Since the statutes defining the jurisdiction of the Customs Court are so intricate and because international trade problems have become so complex, it has become increasingly more difficult to determine, in

advance, whether or not a particular case falls within the exclusive jurisdiction of the Customs Court and is therefore excluded from the jurisdiction of the district courts. The result has been considerable jurisdictional confusion manifested by a significant number of cases which have been instituted in the district courts only to be dismissed for lack of jurisdiction. This has resulted in the inability of plaintiffs to obtain judicial review of their cases on the merits. S. 1654, as amended, attempts to solve this problem by clarifying the jurisdictional statutes relating to the United States Customs Court and by expanding the jurisdiction of that court.

In addition, the proposed solution to the jurisdictional confusion which now exists relieves the district courts of some of the cases now contained on their congested calendars while, at the same time, makes more efficient use of the under-utilized resources, expertise, and nationwide jurisdiction of the United States Customs Court.

The amended bill serves several other purposes. The bill modifies some provisions relating to the designation of the chief judge and the appointment of judges to the Customs Court which the Committee believes are currently inappropriate for a court established under Article III of the United States Constitution. The bill also clarifies the powers of the United States Customs Court by making it clear that that Court possesses all of the powers of an Article III court.

Moreover, the proposal complements the recently enacted Trade Agreements Act of 1979, the implementing legislation stemming from completion of the Tokyo Round of the Multilateral Trade Negotiations. Title X of the Trade Agreements Act provides for judicial review of certain types of agency actions. Unfortunately, the Act fails to establish details describing the manner in which some civil actions are to be commenced and the time limits within which the civil actions are to be filed. The proposed Customs Courts Act of 1979 is responsive in providing for these areas.

Finally, in order to reflect the expanded jurisdiction of the Court, this legislation changes the name of the United States Customs Court to the United States Court of International Trade. This designation is more descriptive of the Court's clarified and expanded jurisdiction and its new judicial functions and purposes relating to international trade.

STATEMENT

The history of the United States Customs Court has been one of constant evolution. The types of decisions involving import transactions have expanded since the establishment of the Board of General Appraisers, the administrative unit within the executive branch of government which in prior years processed general administrative matters relating to import transactions. In 1926, the United States Customs Court was established to succeed this outdated administrative body. During the following thirty-year period, the Customs Court became established as an integral component of the federal judiciary. In 1956, Congress declared the Customs Court to be established as a court under Article III of the United States Constitution. In the late 1960s, it was recognized that both the procedures and jurisdiction of the Customs Court were in need of revision. When it eventually became apparent that the procedural aspect was in greater need of revision and that this would be a massive undertaking in itself, Congress decided to devote its efforts to enactment of the Customs Court Act of

1970, a reform which substantially modified the Court's procedures, leaving the clarification of jurisdictional matters for the future.

Recently, with the completion of the Tokyo Round of the Multilateral Trade Negotiations and the President's signing of the Trade Agreements Act of 1979, the Committee realized more than ever the need for additional legislation regarding the Customs Court. The Trade Agreements Act substantially expanded the opportunity for judicial review of antidumping and countervailing duty determinations. The Act also, for the first time, authorized the Customs Court to grant injunctive relief in limited circumstances.

As an historical consequence, the series of statutes which govern the Court's jurisdiction, status and procedures are akin to a jigsaw puzzle with enough missing pieces to make it difficult for any but the closest observer to discover what the completed puzzle was intended to depict. The Trade Agreements Act continued this process by including a number of important modifications. However, this incomplete puzzle still awaits its few remaining pieces. The Committee believes that the proposed Customs Court Act of 1979 will help clarify the law by completing the picture through the resolution of the jurisdictional and other related problems.

This proposed legislation has evolved as a result of the extensive hearings held last year on the proposed Customs Courts Act of 1978 (S. 2857) and this year's bill, the proposed Customs Courts Act of 1979 (S. 1654). The Committee has carefully studied the comments received at the hearings and has concluded that S. 1654 is a vast improvement over its more controversial predecessor.

Recently, the district courts have become overburdened and overworked through the years leading to considerable delays in the resolution of disputes. The comparatively recent increase of litigation in the field of international trade has compounded this problem by overtaking the already outstanding caseload of the district courts. Conversely, the volume of litigation instituted in the Customs Court has decreased. Under these circumstances, the Committee believes that it makes good sense to require that some of the cases now instituted in the overcrowded district courts clearly belong to the under-utilized Customs Court.

S. 1654 would create a comprehensive system of judicial review of civil actions arising from import transactions. This scheme of review would be extremely effective since it would perfect the status of the Customs Court by granting it all the powers in law and equity of, or as conferred by statute upon, a district court of the United States. The United States Court of International Trade would continue to be equipped with the same expertise and specialized skills that the United States Customs Court has acquired through the years. Moreover, the Court would continue to remain national in scope and to insure uniformity of decision and policy to litigants with regard to the adjudication of disputes involving import transactions.

The Committee believes that the clarification and expansion of the customs courts' jurisdiction will help to assure access to judicial review of civil actions arising from import transactions. The customs courts are national courts and their decisions are nationwide in impact. Thus, a clarification of jurisdiction will eliminate the possibility of conflicting decision on any one point of dispute. This, coupled with their current expertise in the area, would enable the customs courts to render

extremely expeditious decisions in matters which are important both to our country and to our trading partners. The clarification of jurisdiction eliminates at least some of the confusion in the international arena created by our beliefs in the availability of judicial review, without compromising that belief.

It is the view of the Committee that this clarification of jurisdiction possesses substantial advantages in terms of our ability to conduct our trade policy. This would enable us to maintain judicial review, while simultaneously increasing its availability, and assuring our trading partners that administrative determinations in this area will be subject to judicial review only by a limited number of courts which are in a position to render expeditious decisions. The clarification and expansion of the customs courts' jurisdiction is warranted not only because it will eliminate the considerable jurisdictional confusion which now exists, but because of two other important considerations: considerations of judicial economy, and the need to increase the availability of judicial review in the field of international trade in a manner which results in uniformity without sacrificing the expeditious resolution of import related disputes.

Concluding, S. 1654 would make it clear that the United States Court of International Trade possesses broad jurisdiction to entertain certain civil actions arising out of import transactions. In addition, the Customs Courts Act of 1979 would make it clear that, in those civil actions within its jurisdiction, the Court possesses the authority to grant the appropriate relief when required to remedy an injury. These provisions, when coupled with those contained in the Trade Agreements Act of 1979, make it clear to those who suffer an alleged injury in this area, that they may seek redress in a court with confidence that their case will be heard on the merits—not decided upon jurisdictional grounds and that, if they are successful, the Court of International Trade will be able to afford them the relief which is appropriate and necessary to make them whole. This legislation will offer the international trade community, as well as domestic interests, consumer groups, labor unions and other concerned citizens, a vastly improved forum for judicial review of administrative actions of the United States Customs Service and other Government agencies dealing with imported merchandise.

SECTION-BY-SECTION ANALYSIS

TITLE I

Section 101. Under current law, the jurisdiction of the district courts over international trade matters is defined so as to encompass any case which is not within the exclusive jurisdiction of the United States Customs Court. See 28 U.S.C. 1340. Because the statutes defining the jurisdiction of the Customs Court are so intricate and because international trade problems have become so complex, it has become increasingly more difficult to determine, in advance, whether or not a particular case falls within the exclusive jurisdiction of the Customs Court and is therefore excluded from the jurisdiction of the district courts. The result has been considerable jurisdictional confusion which has been demonstrated by the fact that a significant number of civil actions have been instituted in the district courts only to be dismissed

for lack of jurisdiction. See, for example, *Flintkote Company v. United States*, 596 F.2d 51 (C.A. 2, 1979); *Consumers Union of United States, Inc. v. Committee for Implementation of Textile Agreements*, 561 F.2d 872 (C.A.D.C.), *cert. denied*, 435 U.S. 933 (1977); *SCM Corporation v. United States*, 549 F.2d 812 (C.A.D.C. 1977); *Committee to Preserve American Color Television v. W. Michael Blumenthal*, D. D.C. Civil Action No. 79-1207 (appeal pending, C.A.D.C. No. 79-1948); *The American Distilling Co. v. Strauss*, D. D.C., Civil Action No. 79-931 (1979).

The dismissal of these actions has resulted in the expenditure of time and effort by individuals who believe that they have real grievances in this field only to find that their case will not be heard on its merits. The amended bill attempts to solve this problem by clarifying the existing jurisdictional statutes relating to the United States Customs Court and by expanding the jurisdiction of the Court to include any civil actions involving imports and a statute, constitutional provision, treaty, executive agreement or executive order which is directly and substantially concerned with international trade. The proposed solution to the jurisdictional confusion which now exists possesses the additional benefit of relieving the district courts of some of the cases now contained on their congested calendars while, at the same time, making more efficient use of the underutilized resources, expertise and nationwide jurisdiction of the United States Customs Court.

The amended bill serves several other purposes. The proposal amends the current provisions relating to the designation of the chief judge and the appointment of other judges to the Customs Court which are inappropriate for an Article III court. It also clarifies the powers of the United States Customs Court by making it clear that the Court possesses all of the powers of an Article III court. In addition, the amended bill complements the Trade Agreements Act of 1979 which provided for judicial review of certain types of agency actions but failed to provide details as to such matters as the manner in which the suits are to be instituted and the time limits within which the suits are to be filed.

Finally, in order to reflect the expanded jurisdiction of the Court, the proposal changes the name of the United States Customs Court to the United States Court of International Trade.

TITLE II

Section 201. This section changes the name of the United States Customs Court to the United States Court of International Trade. This section makes it clear that this is a change in name only. The Committee intends that current judges of the United States Customs Court will continue to serve as judges of the Court of International Trade, while pending cases in the Customs Court upon the date of enactment will continue in the United States Court of International Trade.

Section 202. Subsection (a) of section 202 of the bill repeals the present law relating to the designation of the chief judge of the United States Customs Court and the appointment of judges to that Court by amending 28 U.S.C. § 251. Current law provides that the President "from time to time" shall designate one of the judges of the Customs Court to serve as chief judge. As a result, the position of the

chief judge is subject to change upon a designation by the President. The Committee believes that this provision of current law is not appropriate for a court established under Article III of the Constitution.

Current law also provides that no more than five judges of the United States Customs Court shall be members of the same political party. The Committee finds this provision to be inappropriate for a court established under Article III of the Constitution. Political affiliation should not be a consideration in selecting individuals to serve as judges of the court.

Subsection (a) of 28 U.S.C. § 251 would be amended to provide that the Court of International Trade will consist of nine judges and declares that the Court is a court established under Article III of the Constitution. This new subsection has the effect of removing the requirement concerning political affiliation of persons designated or appointed to the Court.

Subsection (b) of 28 U.S.C. § 251 would be amended so as to provide for the appointment of a chief judge of the Court of International Trade. The provisions concerning the appointment of the chief judge would be consistent with the new provisions proposed for the appointment of chief judges of the district courts found in S. 1477, the Federal Courts Improvement Act of 1979 which recently passed the Senate.

Subsection (b) of section 202 is a conforming modification to 28 U.S.C. § 251 required as a result of subsection (a) of section 202.

Subsection (c) of section 202 provides that the judges serving on the Customs Court on the day before the date of enactment of this legislation shall continue to serve as judges of the Court of International Trade. Subsection (c) further provides that the chief judge of the Customs Court serving on the day prior to the date of enactment of the bill shall continue to serve as chief judge of the Court of International Trade until he attains the age of seventy years.

Section 203. This section removes an anomaly which affects the Customs Court and which is inappropriate for a court established under Article III of the United States Constitution. Under current law, an active judge of the United States Customs Court may sit by designation as a district judge or as a judge of the Court of Customs and Patent Appeals. An active judge may not serve by designation as a judge of a circuit court of appeals even though a senior judge of the Customs Court may sit by designation as a judge of a circuit court of appeals. This section would remove this anomaly by permitting a judge of the Court of International Trade to serve by designation as a district judge, a judge of the Court of Customs and Patent Appeals, or a judge of a circuit court of appeals.

TITLE III

Section 301. Subsection (a) of section 301 repeals the current statutes relating to the jurisdiction of the United States Customs Court now contained in chapter 95 of Title 28 of the United States Code and substitutes for those provisions five new sections which define the jurisdiction of the new Court of International Trade and the powers of that Court.

Proposed section 1581 of title 28 contains the major jurisdictional grants of authority to the Court of International Trade.

Subsection (a)(1) of section 1581 in major part merely restates existing law as to the jurisdiction of the Customs Court. The only exception to this principle is found in subsection (a)(1)(D).

Subsection (a)(1)(D) of proposed section 1581 would enlarge the present jurisdiction of the Customs Court so as to permit suit to be commenced as a result of a demand for redelivery of imported merchandise to the custody of the Customs Service. The expansion of jurisdiction to entertain this type of suit is not of major significance since a demand for redelivery (or a "constructive seizure" (to Customs custody is in reality no different than a decision to exclude merchandise from entry or delivery—a decision which the Customs Court may now review. The only difference between a decision to exclude merchandise from entry or delivery and a demand for redelivery is the time when the decision is made by the Customs Service. The decision to exclude is made at the time an entry is attempted. A demand for redelivery is made after the goods have already entered but the Customs Service subsequently decides that the goods should not have been allowed into the commerce of the United States in the first instance. Both decisions possess the effect of denying the importer the right to introduce the goods into the stream of commerce.

The exclusion of merchandise pursuant to section 337 of the Tariff Act of 1930, is expressly not included in subsection (a)(1)(D) because determinations of the International Trade Commission under section 337 of the Tariff Act of 1930 are directly, reviewable in the Court of Customs and Patent Appeals. See 28 U.S.C. § 1543. See also, section 502 of this bill.

Under the bill, the filing and denial of a protest will continue as prerequisites to the institution of suit under proposed section 1581 (a)(1) as will the payment of liquidated duties, charges or exactions, except under the circumstances provided or in proposed section 2643(e). See, proposed section 2631(a); 2637(a). See also, proposed section 1583. The right to a trial de novo is also preserved by proposed section 2640(a)(1). See also, proposed sections 2632(a); 2635(a); 2636(a); 2638; 2639 (a), (b); 2643(b). See also, proposed section 2643(a).

Subsection (a)(2) of proposed section 1581 is designed to insure the exclusivity of the new method for contesting the assessment of a countervailing or antidumping duty set forth in section 516A of the Tariff Act of 1930. Section 516A of the Tariff Act of 1930 was added to the Tariff Act of 1930 by the Trade Agreements Act of 1979. The Trade Agreements Act of 1979 revised the antidumping and countervailing duty statutes so as to provide, inter alia, that each year the administering authority is to publish a statement of the proposed countervailing or antidumping duty to be assessed upon merchandise covered by an antidumping or countervailing duty order and which was entered into the United States during the preceding year. Section 516A of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979, provides that an importer must challenge the assessment or the amount of the antidumping or countervailing duty to be imposed at the time of the annual publication. An importer may not await the actual assessment of the duty, file a protest, and upon denial of the protest, file a suit in the Customs Court.

Subsection (a)(2) of section 1581 is designed to prevent circumvention of section 516A of the Tariff Act of 1930 by specifically prohibit-

ing the institution of a civil action in the Court of International Trade pursuant to subsection (a) (1) of section 1581 to review any determination specified in section 516A. The judicial review provisions of section 516A provide the exclusive method of judicial review of the determination specified in that section. Subsection (a) (2) of proposed section 1581 is not designed to prevent the Court of International Trade from entertaining other civil actions relating to antidumping or countervailing duties as long as the civil actions do not challenge a determination specified in section 516A of the Tariff Act of 1930.

Subsection (b) of proposed section 1581 in part merely states existing law by granting exclusive jurisdiction to the Court of International Trade to entertain suits instituted under section 516 of the Tariff Act of 1930. The current prerequisites to suit under section 516 of the Tariff Act of 1930 are preserved by the bill. See proposed sections 2636(b), 2637(b). The right to a trial de novo is also preserved by the bill in proposed section 2640(a) (2). See also, proposed sections 2631(b), 2632(a), 2635(a), 2636(b), 2643(a), (b).

The only change in existing law made by subsection (b) of proposed section 1581 is to grant the authority to entertain civil actions arising under section 516A of the Tariff Act of 1930 to the Court of International Trade. This addition to the court's jurisdiction was actually effectuated by title X of the Trade Agreements Act of 1979 and subsection (b) of proposed section 1581 merely restates this fact.

Subsection (c) (1) of section 1581 is a new jurisdictional provision. Pursuant to statutory authority contained in a number of different statutes, the President may take certain actions to protect domestic industry against injury due to imports. These statutes specify that the President may not act until he has received advice from the International Trade Commission. Under current law, the advice rendered by the International Trade Commission is not subject to judicial review. This preclusion of judicial review appears to extend to questions of whether or not the Commission has acted according to specified procedures. Proposed section (c) (1) of section 1581 would permit the Court of International Trade to review questions of procedural regularity only in cases where the International Trade Commission has rendered its advice to the President under the specified statutes. The requirement contained in the subsection that judicial review may occur only after the President's decision has become final is necessary in order to avoid casting doubt upon the status of the Court of International Trade as a court established under Article III of the United States Constitution. The Committee believes that it is reasonable for the courts to ensure that the President act on ITC proceedings which comply with statutory notice and hearing requirements, if any. This is the effect of the standard of judicial review in section 1581(c) (1). See also, proposed section 2640(c).

Subsection (c) (2) represents the analogue of subsection (c) (1) of the proposed section 1581. Under the statutes specified in subsection (c) (1), the President may take no action unless he receives affirmative advice from the International Trade Commission. If the International Trade Commission does not find that the requisites for action under the statute have been met, the International Trade Commission does not provide advice to the President and the President therefore does not act. Subsection (c) (2) is designed to grant jurisdic-

tion to the Court of International Trade to determine whether or not the International Trade Commission has complied with relevant procedures when it decides not to recommend any action to the President. The Committee believes that the standard for judicial review found in subsection (c) (1) is also appropriate in subsection (c) (2). There should not be a greater scope for review in negative determinations than in affirmative ones. See also, proposed section 2640(c).

Subsection (d) of proposed section 1581 is a new jurisdictional provision which grants exclusive jurisdiction to the Court of International Trade to review, for procedural regularity only, actions of the Special Trade Representative taken under the statutes specified in this subsection. As is the case with the statutes specified in subsection (c) (1) of proposed section 1581, the statutes specified in subsection (d) provide authority to the President to take specified action upon receiving certain advice from the Special Trade Representative. Subsection (d) of proposed section 1581 would grant exclusive jurisdiction to the Court of International Trade to review actions of the Special Trade Representative under the specified statutes for procedural regularity only after the decision of the President has become final. The requirement for finality of Presidential action is required in order to avoid casting any doubt on the article III status of the court. See also, proposed section 2640(c).

Subsection (e) for proposed section 1581 is a new jurisdictional provision. The first portion of subsection (e) transfers jurisdiction to review decisions of the Secretary of Labor certifying or refusing to certify workers as eligible for adjustment assistance under the Trade Act of 1974 from the circuit courts of appeals to the Court of International Trade. Review of decisions of the Court of International Trade would be available in the Court of Customs and Patent Appeals. The second portion of subsection (e) of proposed section 1581 would grant exclusive jurisdiction to the Court of International Trade to review decisions of the Secretary of Commerce certifying or refusing to certify businesses or communities as eligible for adjustment assistance under the Trade Act of 1974. There is no current specific provision for judicial review of these decisions.

The grant of exclusive jurisdiction to the Court of International Trade to entertain the suits specified in subsection (e) of proposed section 1581 is viewed as appropriate in that, in determining whether or not workers, communities, or businesses, are eligible for adjustment assistance, the relevant Secretary must determine whether or not the workers, communities or businesses have suffered injury as a result of imports. The question of whether the injury is the result of imports is similar to the type of question which the Court of International Trade will review under the antidumping and countervailing duty statutes, both of which contain a requirement that an American industry be injured by imports before a countervailing or antidumping duty may be assessed.

The Committee intends that judicial review pursuant to subsection (e) of proposed section 1581 proceed upon the basis of the record made before the Secretary. See, proposed section 2639(d).

Subsection (f) of proposed section 1581 is included in the bill for purposes of clarity. Title X of the Trade Agreements Act of 1979 granted exclusive jurisdiction to the Customs Court to review certain

final determinations made in relation to the Government Procurement Code. Subsection (f) of proposed section 1581 restates this grant of exclusive jurisdiction for purposes of clarity. See also, proposed sections 2631(d), 2632(c), 2636(f), 2640(a)(2).

Subsection (g) of proposed section 1581 is also included in the bill for purposes of clarity. Title X of the Trade Agreements Act of 1979 granted exclusive jurisdiction to the Customs Court to entertain civil actions instituted pursuant to section 77(c)(2) of the Tariff Act of 1930. This section relates to the disclosure of confidential information received in the course of an antidumping or countervailing duty investigation. The purpose of subsection (g) of proposed section 1581 is to restate this jurisdictional grant for purposes of clarity. See also, proposed section 2631(e), 2632(c), 2636(e), 2640(a)(4), 2643(c).

Subsection (h)(1) of proposed section 1581 is a residual jurisdictional provision which expands the exclusive jurisdiction of the Court of International Trade to include any civil action which (a) arises directly from an import transaction and which (b) involves one of the specified statutes concerned with international trade or a provision of the Constitution, a treaty of the United States, an executive agreement or an executive order which directly and substantially involves international trade.

The purpose of this broad jurisdictional grant is to eliminate the confusion which currently exists as to the demarcation between the jurisdiction of the district courts and the Court of International Trade. This residual jurisdictional provision should make it clear that all suits of the type specified are properly instituted only in the Court of International Trade and not in the district courts. The provision should eliminate the difficulty experienced by many plaintiffs who in the past have instituted suits in the district courts only to have those suits dismissed for lack of jurisdiction. The jurisdictional grants contained in subsection (h)(1) of proposed section 1581 will ensure that in the future these suits are heard on their merits. See also, sections 710 and 711 of the bill.

Subsection (h)(2) of proposed section 1581 is designed, as is its counterpart in subsection (a)(2) of proposed section 1581, to prevent circumvention of the exclusive means of review set forth in section 516A of the Tariff Act of 1930 through the use of subsection (h)(1) of section 1581. Subsection (h)(2) makes it clear that if a suit challenges a determination specified in section 516A of the Tariff Act of 1930, it may not be instituted pursuant to subsection (h)(1) of proposed section 1581. Subsection (h)(2) of proposed section 1581 makes it clear, however, that the court is not prohibited from entertaining a suit relating to countervailing or antidumping duties under subsection (h)(1) of proposed section 1581 so long as the suit does not involve a challenge to a determination specified in section 516A of the Tariff Act of 1930.

Subsection (i)(1) contains three provisions designed to limit the effect of subsection (h)(1) of proposed section 1581. The first limitation is contained in subsection (i)(1)(A) and relates to actions concerning national security taken under section 305 of the Tariff Act of 1930.

Subsection (i)(1)(B) is designed to prevent the court from reviewing a ruling or a refusal to issue or change a ruling issued by the

Customs Service under section (h) (1) rather than pursuant to subsection (a) of proposed section 1581. This prohibition, however, is subject to an exception which is contained in subsection (i) (2) of proposed section 1581.

The third prohibition is contained in subsection (i) (1) (C). This provision prohibits the court from exercising jurisdiction under subsection (h) (1) of proposed section 1581 over the actions specified in subsection (i) (1) (C). It is clear, however, that under proposed section 1582, the court may entertain certain of the actions specified in subsection (i) (1) (C) under certain specified circumstances.

Subsection (i) (2) of proposed section 1581 sets forth the exception to the prohibition contained in subsection (i) (1) (B). Under current law, an importer who wishes to import certain merchandise may request, in advance of the transaction, a ruling from the Customs Service as to the manner in which the Customs Service will classify or value the merchandise or otherwise treat the merchandise upon importation. If the importer is dissatisfied with the ruling issued by the Customs Service, the importer may import the merchandise and, when it is treated in accordance with the ruling, protest the treatment accorded the importation. Upon denial of the protest the importer may then institute a suit in the United States Customs Court.

In certain circumstances, the procedure for obtaining review of a ruling of the Customs Service has proved to be unsatisfactory. For example, the ruling issued by the Customs Service may state that the merchandise will be subject to a rate of duty which makes the importation financially impractical even if the importer may ultimately recover a refund of the duties after establishing the error of the ruling of the Customs Service in the United States Customs Court. In these circumstances, the only choice of the importer may be to attempt to import a smaller quantity of goods than that originally intended solely for purposes of testing the ruling of the Customs Service. However, it may in fact be commercially impossible or impractical for the importer to purchase a smaller quantity of the merchandise due to the reluctance of the exporter to sell this smaller quantity. In addition, it may be impossible to test the ruling of the Customs Service through the importation of a smaller quantity because by the time the ruling has been tested, the demand for the merchandise may have been eliminated. This would be the case, for example, with respect to seasonal merchandise.

In light of these facts, subsection (i) (2) would permit an importer to obtain judicial review of a ruling by the Customs Service other than by means of subsection (a) of proposed section 1581. This right to direct access to the Court of International Trade in order to test the ruling of the Customs Service is a very limited one. This right is available only if the importer demonstrates without substantial doubt that it is commercially impractical to obtain review under subsection (a) of proposed section 1581. For example, the importer may demonstrate that the exporter will not sell a small quantity of merchandise and the duties that would have to be paid if a larger quantity is imported would make the transaction financially impossible or impractical. In addition to the financial or commercial impracticability, the importer must also demonstrate that he would suffer irreparable harm if forced to obtain judicial review through the methods set forth in

proposed section 1581(a). This requirement could be fulfilled by an importer, for example, by a demonstration that the demand for the merchandise is seasonal. It is therefore clear that the exception contained in subsection (i)(2) is a very narrow one. A broad interpretation of the exception would nullify subsection (a) of proposed section 1581 contrary to the intent of the bill.

Subsection (i)(2) sets forth a standard of review. If a ruling is contested pursuant to proposed section 1581(a), the plaintiff is entitled to a trial *denovo*. However, if a plaintiff is able to satisfy the requirements of subsection (i)(2) and obtains judicial review prior to an actual importation of merchandise, the Court of International Trade will review the ruling or the refusal to issue or change a ruling solely to determine whether or not the challenged decision was arbitrary or capricious or otherwise contrary to law based upon the evidence before the Customs Service at the time it made the challenged decision. The phrase "otherwise contrary to law" is intended to refer solely to an erroneous interpretation of a statute, and is not intended to permit the court to conduct a trial *de novo*.

Proposed section 1582 is a new jurisdictional provision which grants jurisdiction to the Court of International Trade to entertain suits instituted by the United States to recover a civil fine or penalty or enforce a forfeiture imposed under section 592 or sections 704(i)(2) or 734(i)(2) of the Tariff Act of 1930. Each of these actions will be commenced in the Court of International Trade. Since each of these actions may present questions which involve the expertise of the Customs Court, e.g., questions concerning classification or valuation, it is appropriate to provide for jurisdiction in the Court of International Trade over these actions.

Under the proposed section, within thirty days after the action is commenced, a party who desires a jury trial may move to transfer the case to an appropriate district court. The reference to an "appropriate district court" refers to a district court in which venue would have been proper if the case could have been instituted in a district court in the first instance.

Nothing in proposed section 1582 is intended to prejudge the issue of whether a jury trial is appropriate or required in these types of cases. Pursuant to subsection (b)(2), that issue is to be decided in the first instance by the Court of International Trade.

If the court determines that a transfer is appropriate, the clerk of the Court of International Trade is required to transfer the pleadings and documents in the case within 10 days of the issuance of the order of transfer. Upon transfer, the case shall proceed as if it had been instituted in the district court initially.

Subsection (d) of proposed section 1582 provides in effect that the Court of International Trade shall apply the procedures and rules of evidence that would be applied in a district court. In addition, subsection (d) specifically provides that in cases involving penalties assessed under section 592 of the Tariff Act of 1930, the burden of proof specified in section 592(e) of that Act will apply in the Court of International Trade rather than the burden of proof specified in proposed section 2639(a).

Proposed section 1583 provides for the filing of counterclaims by the United States. This is a new provision since under current law

the Customs Court may not entertain counterclaims. The circumstances in which a counterclaim may be asserted are quite limited. A counterclaim may not be asserted unless in effect it arises out of the same import transaction pending before the court.

Under this section, the current law relating to cases involving valuation will be changed. Under current law, when a plaintiff challenges the valuation of merchandise by the Customs Service in the Customs Court, the burden is placed upon the plaintiff both to demonstrate that the original valuation of the Customs Service is erroneous and to establish a new value. The United States may defend the action both by claiming that the original valuation was correct and by asserting in the alternative that if the original valuation was incorrect, the goods should be valued in a way different from the way claimed by the plaintiff. In some cases, the plaintiff has been able to demonstrate that the original valuation was erroneous but the United States has been able to demonstrate that the goods should have been valued in a manner different than that claimed by the plaintiff, and in effect that the goods should have been valued at a higher value than that originally determined. In these circumstances, the Customs Court has dismissed the action. It has not ruled that the plaintiff should pay the additional duties which would have been due if the goods had been valued as the United States demonstrated at trial. Under proposed section 1583, it will be possible for the court to rule that the plaintiff should pay additional duties to the United States upon the basis of a counterclaim asserted and proved by the United States which results in a higher valuation than the original valuation or the valuation claimed by the plaintiff.

Proposed section 1584 is a technical provision concerning cure of defects and permits the transfer of cases from the Court of International Trade to a district court when it is determined that the case should have been filed in the district court in the first instance. This section also permits the transfer from a district court to the Court of International Trade when the district court determines that the case should have been instituted in the Court of International Trade in the first instance. These provisions are patterned after the provisions which govern suits in the Court of Claims.

Proposed section 1585 clarifies the authority of the Court of International Trade in providing that the Court of International Trade possesses all the powers in law and equity possessed by a district court. In the past, there has been some doubt as to whether or not the Customs Court possessed this authority. This section makes it clear that the Court of International Trade possesses these powers.

Subsection (b) of proposed section 301 of the bill is merely a technical amendment changing the table of chapters of Part IV of Title 28, United States Code, so as to reflect the change in the name of the United States Customs Court to the Court of International Trade.

TITLE IV

Section 401(a). This section of the bill repeals most of the current provisions governing procedure in the Customs Court and substitutes new provisions setting forth new procedures. The section also, in some instances, restates current law but reorganizes the manner in which current law is set forth.

Proposed section 2631(a), for the most part, restates current law in that it specifies those individuals who may commence suit under the current jurisdiction of the Customs Court. The new portions of the subsection provide that a surety may commence an action in the Court of International Trade pursuant to the current jurisdiction of the Court. This change merely recognizes a change made by the Trade Agreements Act of 1979. The other new provision contained in proposed section 2631(a) provides that a suit may be filed in the Customs Court by the estate, heirs or successors of a person who filed a protest.

Proposed section 2631(b) restates provisions of current law as amended by the Trade Agreements Act of 1979 for purposes of clarity. The provision also adds to the specifications contained in the Trade Agreements Act of 1979 of the parties who may commence a suit under section 516 of the Tariff Act of 1930 the specification that such a suit may be commenced by the estate, heirs, or successors of a domestic interested party.

Proposed section 2631(c) restates a provision of section 516A of the Tariff Act of 1930, which was added to the Tariff Act by the Trade Agreements Act of 1979. The only change contained in this section takes the form of adding the phrase "or his estate, heirs, or successors" to the provision that a suit may be instituted under section 516A of the Tariff Act of 1930 by any "interested party."

Proposed section 2631(d) restates the provisions contained in the Trade Agreements Act of 1979.

Proposed section 2631(e) restates the provisions contained in the Trade Agreements Act of 1979.

Proposed section 2631(f) is a new provision which specifies that an action other than one specified in the other subsections of proposed section 2631 may be instituted by a person adversely affected or aggrieved by agency action. This section is intended to apply to the broad grant of jurisdiction contained in proposed section 1581(h)(1).

Proposed subsection 2631(g) is a new section granting the right to intervene to a person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade. The provision provides that this right shall not apply to suits instituted under proposed section 1581(a) or section 516 of the Tariff Act of 1930, and by implication, to suits instituted to obtain confidential information under section 777(c)(2) of the Tariff Act of 1930. Under current law, individuals are not permitted to intervene in actions of the type specified in proposed section 1581(a) or section 516 of the Tariff Act of 1930 except for the specific persons granted a right to intervene in section 516 of the Tariff Act of 1930. Thus, with respect to actions instituted pursuant to proposed sections 1581(a) and section 516 of the Tariff Act, proposed section 2631(g) merely restates existing law.

With respect to all other types of actions, except suits instituted to obtain confidential information under section 777(c)(2) of the Tariff Act of 1930, the right to intervene provided for in proposed section 2631(g) states the law as it now exists in the district courts.

Proposed section 2631(h) grants a right to intervene to certain individuals in cases arising under section 777(c)(2) of the Tariff Act of 1930. The difference between the right to intervene contained in proposed section 2631(g) and this subsection is that pursuant to this

subsection a party who is not a party to the investigation in which the confidential information was received may not intervene.

Proposed section 2631(i) sets forth the definitions that are to be used in interpreting the other subsections of section 2631. These definitions repeat verbatim the definitions contained in the amendments to the Tariff Act of 1930 made by the Trade Agreements Act of 1979.

Proposed section 2632 sets forth the manner in which civil actions are to be commenced in the Court of International Trade.

Subsection (a) of proposed section 2632 preserves current law with respect to those actions which are currently within the jurisdiction of the Customs Court. These actions may be commenced by the filing of a summons.

Subsection (b) of proposed section 2632 provides that a civil action commenced under section 516A of the Tariff Act of 1930 shall be commenced either by filing a summons or by filing a summons and complaint as prescribed in section 516A of the Tariff Act of 1930.

Subsection (c) of proposed section 2632 provides that all other civil actions commenced in the Court of International Trade, i.e., other than those specified in subsections (a) and (b) of proposed section 2632, shall be commenced by filing a summons and complaint concurrently in the Court of International Trade.

Subsection (d) of proposed section 2632 is concerned with the filing of papers in the Court of International Trade. Since the Court possesses nationwide jurisdiction, parties located in distant locations may face a disadvantage in filing documents with the Court by mail due to delays in delivery. Therefore, subsection (d) of proposed section 2632 provides that the Court may provide by rule that filing shall be deemed to be the date of mailing rather than the date of receipt by the Court provided that the specified method of mailing is utilized.

Proposed section 2633 is concerned with procedures and fees.

Subsection (a) of proposed section 2633 provides for the payment of a filing fee upon commencement of an action. This section merely restates current law.

Subsection (b) of proposed section 2633 empowers the Court of International Trade to adopt rules governing pleadings and other papers and for control of the court's docket. This provision merely restates existing law.

Subsection (c) of the proposed section 2633 prescribes the manner for the service of papers. The subsection merely restates existing law, with the exception that the subsection now takes account of the fact that the court would be empowered to grant injunctive relief pursuant to proposed section 2643(e).

Proposed section 2634 is concerned with notice of time and place of trial. This section merely restates existing law.

Proposed section 2635 is concerned with the filing of official documents.

Subsection (a)(1) of proposed section 2635 is concerned with the filing of official papers in actions instituted pursuant to proposed section 1581(a). This section merely restates current law with appropriate modification to reflect the changes made by the Customs Procedural Reform Act and the fact that, pursuant to the Trade Agreements Act of 1979, a surety may institute an action in the Customs Court pursuant to proposed section 1581(a).

Proposed section 2635(b)(1) provides for the filing of the official record in actions instituted under section 516A of the Tariff Act of 1930 within forty days, or within such period of time as the Court of International Trade may specify, of the service of the complaint upon the administering authority or the International Trade Commission. The definition of the administrative record is very similar to the definition of the administrative record contained in the Trade Agreements Act of 1979, which added section 516A to the Tariff Act of 1930.

The proposed subsection does permit the Court to prescribe rules for the transmittal of the record. This provision is intended to permit the court to permit the filing of a certified index of the record by the agency in lieu of the entire administrative record.

Subsection (b)(2) of proposed section 2635 specifies the manner in which material contained in the record which is alleged to be confidential or privileged is to be treated by the court. The subsection permits the court to examine the material in camera and to order its disclosure under such terms and conditions as the court may order.

Subsection (c) of proposed section 2635 provides for the transmittal of the confidential information sought in an action commenced under section 777(c)(2) of the Tariff Act of 1930 within 15 days, or within such period of time as the Court of International Trade may specify, of the service of the complaint upon the administering authority or the International Trade Commission.

Subsection (d)(1) of proposed section 2635 provides for the filing of the record in any other civil action in which review is to proceed upon the basis of an administrative record, see, e.g., proposed section 1581(e), within forty days, or within such period of time as the Court of International Trade may specify, of the service of the complaint upon the agency whose action is challenged. The subsection also defines the administrative record for these purposes.

Subsection (d)(2) permits the parties to stipulate to the transmittal to the court of less than the entire administrative record.

Subsection (d)(3) provides for preserving the confidential status of documents contained in the administrative record.

Proposed section 2636 sets forth the time limits for the commencement of various types of civil actions in the Court of International Trade.

Proposed section 2636(a) sets forth the time limits for the commencement of suit pursuant to proposed section 1581(a). The subsection for the most part restates existing law. However, this section also corrects a problem that has arisen in connection with the current jurisdiction of the Customs Court. Under current law, an action must be commenced within 180 days of the date of the mailing of the notice of the denial of a protest. At times, the Customs Service has neglected to mail such a notice. The Customs Court has held that the mailing of a notice is an essential prerequisite to the filing of suit. Therefore, in those instances in which the Customs Service has neglected to mail notice of a denial of a protest, an importer has been forced to delay the commencement of suit until the mailing of a notice of denial of the protest. Proposed section 2636(a)(2) attempts to solve this problem by permitting suit within 180 days of the last date upon which a notice of denial of protest should have been mailed by the Customs Service.

Proposed subsection 2636(b) provides that an action commenced

under section 516 of the Tariff Act of 1930 is to be instituted within 30 days after the date of mailing of a notice transmitted under section 516(c) of the Tariff Act of 1930. This provision restates existing law.

Proposed section 2636(c) sets forth the time limits for instituting two types of civil actions which were first authorized by the Trade Agreements Act of 1979. While that Act authorized suit within 30 days, that period of time is far too long in light of the fact that the decisions to be reviewed, decisions under section 703(c) or section 733(c) of the Tariff Act of 1930, are decisions which in effect merely extend the time within which the agency may act. Therefore, section 2636(c) reduces the time period of 30 days provided for in the Trade Agreements Act of 1979 to 10 days.

Proposed subsection 2636(d) sets forth the time limit for the commencement of suit under section 516A of the Tariff Act of 1930. This subsection merely restates the provisions contained in section 516A of the Tariff Act of 1930.

Proposed subsection 2636(e) sets forth the time limit for the institution of a civil action to make confidential information available under section 777(c)(2) of the Tariff Act of 1930. While the Trade Agreements Act of 1979 granted jurisdiction to the Customs Court to entertain this type of suit, the Act did not set forth the time limit within which suit must be commenced. Since the type of action involved, according to the Trade Agreements Act of 1979, would not stay the administrative investigation pursuant to which the information was obtained, the time limit of 10 days for the institution of suit is viewed as appropriate.

Proposed section 2636(f) sets forth the time limit for the Commencement of suits under section 305(b)(1) of the Trade Agreements Act of 1979. Although the Trade Agreements Act of 1979 authorized the Customs Court to entertain this type of suit, the Act did not set forth a time limit for the institution of suit. Proposed section 2636(f) would provide for the institution of suit within 30 days after the date of publication of the challenged determination in the Federal Register.

Proposed subsection 2636(g) is a general provision which governs all actions not specifically mentioned in subsections (a) through (f) of proposed section 2636. Proposed section 2636(g) establishes a 2-year time limit for the commencement of suit. This time limit is in accord with the general law governing suits against the United States.

Proposed section 2637 provides for the exhaustion of administrative remedies prior to the institution of suit in the Court of International Trade.

Proposed section 2637(a) sets forth the requirement that prior to the institution of suit under proposed section 1581(a) all liquidated duties, charges or exactions must have been paid at the time the action is instituted. This requirement restates existing law.

The proposed section 2637(a) takes into account the fact that, pursuant to the Trade Agreements Act of 1979, a suit under section 1581(a) may be commenced by a surety. However, the surety's obligation to pay the liquidated duties may not be equivalent to the amount of duties due. Therefore, proposed section 2637(a) provides that the surety need pay only the amount of the liquidated duties, charges or exactions which it is obligated to pay under its bond. This section also provides, however, that if the surety prevails in the Court of International Trade, it shall recover only the amount of liquidated duties,

charges or exactions that it paid on the entries included in the action. If additional amounts are to be refunded, the refund shall be paid to the importer of record, its estate, its heirs, successors or assigns.

Proposed subsection 2637(b) provides that before an action may be commenced under section 516 of the Tariff Act of 1930, the administrative procedures set forth in that section must first be exhausted. This section restates existing law.

Proposed section 2637(c) states the general rule of law that in any other action the Court of International Trade shall require the exhaustion of administrative remedies by the plaintiff prior to the institution of suit.

Proposed section 2638 is concerned with the assertion of new grounds in support of a civil action instituted pursuant to section 1581(a). The new grounds which may be asserted are grounds in addition to those specified in the administrative protest, the filing of which is a prerequisite to suit under section 1581(a). The assertion of new grounds is subject to two limitations: (1) the new ground must apply to the same merchandise that was the subject of the protest and (2) the new ground must be related to the same administrative decision that was contested in the protest. This section merely restates existing law.

Proposed section 2639 concerns the burden of proof and the evidence which may be introduced in a suit contesting the valuation of merchandise by the Customs Service.

Proposed section 2639(a) provides that in any suit instituted pursuant to proposed section 1581(a) and (b) the decision of the Secretary of the Treasury or his delegate is presumed to be correct. The burden to prove otherwise shall rest upon the party challenging a decision. This provision restates existing law.

It should be noted that in restating existing law, it is not intended to imply that in civil actions other than those specified, the particular agency involved does not enjoy the presumption of regularity and legality which is normally accorded the actions of a Government agency or official.

It should also be noted that in penalty cases instituted in the Court of International Trade pursuant to section 592 of the Tariff Act of 1930, the burden of proof specified in section 592(e) will apply (proposed sections 1582(d), 2640(a)(5)) rather than the burden of proof specified in this section.

Proposed section 2639(b) concerns evidence which may be introduced in civil actions in which the value of merchandise, is an issue. This provision restates existing law.

Proposed section 2639(c) provides that the evidence which is deemed acceptable by proposed section 2639(a) in cases in which the valuation of merchandise is at issue shall not be acceptable in cases initiated in the Court of International Trade under proposed section 1582, unless otherwise permitted by the Federal Rules of Evidence. This provision is necessary because in cases initiated in the Court of International Trade under section 1582, the Court of International Trade is in all respects equivalent to a district court, and the evidence specified as acceptable in proposed section 2639(a) may not be admissible into evidence in a district court.

Proposed section 2640 specifies the scope and standard of review which is to be applied in actions commenced in the Court of International Trade.

Proposed subsection 2640(a)(1) provides for a trial de novo in suits commenced under proposed section 1581(a). This provision restates existing law.

Proposed subsection 2640(a)(2) provides for a trial de novo in suits commenced under section 516(c) of the Tariff Act of 1930. This provision restates existing law.

Proposed subsection 2640(a)(3) provides for a trial de novo in suits commenced under section 305(b)(1) of the Trade Agreements Act of 1979. This provision is in accord with the intent of that Act.

Proposed subsection 2640(a)(4) provides for a trial de novo in suits commenced in order to obtain confidential information pursuant to section 777(c)(2) of the Trade Agreements Act of 1979. This provision is appropriate because suits of this nature are akin to suits under the Freedom of Information Act in which a trial de novo is required.

Proposed subsection 2640(a)(5) provides for a trial de novo in cases commenced in the Court of International Trade pursuant to proposed section 1582. This provision is appropriate since the types of action specified in section 1582 are now commenced in district courts and a trial de novo is conducted in those courts. This subsection also reiterates the fact that the provisions concerning burden of proof contained in section 592(e) of the Tariff Act of 1930 shall be applicable in these actions in the Court of International Trade.

Proposed subsection 2640(b) provides that in any civil action commenced under section 516A of the Tariff Act of 1930, the court shall determine the matter as specified in subsection (b) of that section. If effect, this provision restates existing law.

Proposed subsection 2640(c) provides that in suits commenced under proposed sections 1581(c) and 1581(d), the court shall review the matter as specified in those subsections. This provision in effect provides that the decisions specified in the two subsections shall be reviewed for procedural regularity only. The substantive decisions will not be subject to judicial review.

Proposed section 2640(d) provides that in any civil action commenced to review a determination certifying or refusing to certify workers, businesses or communities as eligible for adjustment assistance (proposed section 1581(e)), the court is to be governed by the terms of the judicial review provision which was originally contained in the Trade Act of 1974 (19 U.S.C. 2322) and which governed judicial review of decisions of the Secretary of Labor certifying or refusing to certify workers as eligible for adjustment assistance.

Proposed subsection 2640(e) provides that in any civil action not specified elsewhere in section 2640, the court shall determine the matter as provided in the Administrative Procedure Act.

Proposed section 2641 is concerned with witnesses and the inspection of documents.

Proposed subsection 2641(a) allows for the introduction of evidence, the direct and cross-examination of witnesses and the inspection of samples and papers in all cases subject to de novo review in the Court of International Trade. See proposed section 2640(a). The section also makes it clear that subject to specific statutory exception (see proposed section 2639(b)), the Federal Rules of Evidence are to apply in the Court of International Trade. This provision restates existing law.

Proposed section 2641(b) provides that the Court of International Trade may order that trade secrets or commercial and financial information which is privileged or confidential shall not be disclosed or shall be disclosed under such terms and conditions as the court may order. In effect, this provision restates the law as developed in the decisions of the Customs Court.

Proposed section 2642 provides that the Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States. This provision restates existing law.

Proposed section 2643 specifies the types of relief which the Court of International Trade may order.

Proposed section 2643(a) provides that in any civil action commenced under proposed sections 1581 or 1582, or in ruling upon a counterclaim asserted under section 1583, the Court of International Trade may enter a judgment for money for or against the United States. This provision makes a number of changes in existing law.

Under existing law, if the Customs Court decides a case in favor of an importer, it returns the appropriate papers to the Customs Service with an order that the entry be reliquidated in accordance with the decision of the court. This reliquidation has the effect of requiring a refund of customs duties to the importer.

Proposed section 2643(a) would make the return of the papers to the Customs Service unnecessary. The court would simply enter a judgment for the amount to be refunded to the importer and the judgment would be paid in the same manner as any judgment against the United States.

Proposed section 2643 also alters current law by permitting the court to enter a money judgment for the United States. Currently, the Customs Court does not and cannot enter a money judgment for the United States. The change in existing law is necessary because of the provisions of the bill which would permit the United States to assert a counterclaim (proposed section 1583) and because the Court of International Trade will hear cases pursuant to proposed section 1582 which are instituted by the United States for the recovery of money.

Proposed subsection 2643(b) is a new provision which empowers the Court of International Trade to remand cases instituted pursuant to proposed section 1581(a) or section 516 of the Tariff Act of 1930. Under existing law, in a suit commenced under the court's jurisdiction to entertain cases involving the classification or valuation of merchandise, if the plaintiff succeeds in demonstrating that the original decision of the Customs Service was incorrect but is unable to prove the correct decision, the court dismisses the civil action. In effect, the court holds in the favor of the United States even though the plaintiff has demonstrated that the challenged decision of the Customs Service was erroneous.

Proposed section 2643(b) would permit the court in this situation to remand the matter to the Customs Service to make a correct decision or would permit the court to restore the matter to its calendar in order to permit the parties to introduce additional evidence as to the substance of the correct decision.

Proposed section 2643(c) concerns the type of relief which may be awarded under section 777(c)(2) of the Tariff Act of 1930. This provision is made necessary because the Trade Agreements Act of 1979

specifically provides that the Customs Court may order the disclosure only of certain information deemed to be confidential by the International Trade Commission.

Proposed section 2643(d) is a general grant of authority to the Court of International Trade to issue or order any form of appropriate relief. This is a new provision which makes it clear that the court may issue declaratory judgments, writs of mandamus and prohibition, as well as injunctions, except in those instances specified in proposed subsections (a), (b), and (c), where the type of relief which may be awarded is specified by statute.

Proposed section 2643(e) is a new provision which expands the authority of the Court of International Trade to issue preliminary or permanent injunctive relief beyond the grant of authority contained in the Trade Agreements Act of 1979.

In the Trade Agreements Act of 1979, Congress, for the first time, authorized the Customs Court to issue injunctive relief in limited circumstances. Proposed section 2643(e) would expand the circumstances in which the court may order injunctive relief. However, the proposed section requires the court, in considering whether or not to issue injunctive relief, to consider, among other matters, whether the person making the request has exhausted all appropriate remedies and will be irreparably injured if the relief is not granted. The court is specifically directed to weigh the alleged irreparable injury which would be suffered by the plaintiff against the harm which would be caused to the public interest if the requested injunction is issued. If the harm to the public interest which would be caused by the issuance of the injunction outweighs the harm which would be caused to the plaintiff if the injunction is not granted, the court is to deny the injunction.

Proposed section 2644 provides for the issuance of decisions, findings of fact and conclusions of law.

Proposed section 2644(a) restates existing law by requiring the Court of International Trade to issue a statement of findings of fact and conclusions of law or an opinion in any contested civil action before it. The only modification to existing law contained in this section provides that a finding of fact or conclusion of law or opinion must accompany an order or decision granting or refusing an injunction.

Proposed section 2644(b) provides that the court may amend its findings or make additional findings of fact if a motion is made or the court on its own motion decides to do so not later than 30 days after the entry of judgment. This provision restates existing law.

Proposed section 2644(c) provides that a decision of the Court of International Trade is final and conclusive unless a retrial or rehearing is granted or a timely appeal is taken to the Court of Customs and Patent Appeals. This provision restates existing law.

Proposed section 2645 sets forth the requirement for a retrial or rehearing. The provision provides that a retrial or rehearing may be ordered upon motion or sua sponte not later than 30 days after the entry of the judgment or order. This provision restates existing law.

Proposed section 2646 sets forth the order of precedence of cases on the calendar.

Proposed subsection 2646(a) provides that cases involving the exclusion of perishable merchandise shall be given preference over priority over all other civil actions.

Proposed section 2646(b) provides that except for cases involving the exclusion of perishable merchandise, civil actions for the review of a determination under section 516A(a)(1)(B) or section 516A(a)(1)(E) of the Tariff Act of 1930 shall be given priority over other such civil actions. This provision is in accord with the intent of the Trade Agreements Act of 1979.

Proposed section 2646(c) provides that except for actions involving the exclusion of perishable merchandise actions or actions specified in proposed section 2646(b), actions under section 516 or section 516A of the Tariff Act of 1930 shall be given preference over other civil actions. The preferential treatment granted to cases instituted pursuant to section 516 of the Tariff Act of 1930 is in accord with existing law. The preferential treatment granted to cases instituted under section 516A of the Tariff Act of 1930 is in accord with the intent of the Trade Agreements Act of 1979.

Subsection (b) of section 401(b) contains a technical amendment made necessary by the change in name of the Customs Court.

TITLE V

Section 501. This section amends the statute specifying those orders that may be appealed to the Court of Customs and Patent Appeals so as to make it clear that an appeal may be taken from any interlocutory order granting, continuing, modifying, refusing or dissolving an injunction or refusing to dissolve or modify an injunction. This provision is consistent with the statute governing appeals from a district court to a circuit court of appeals.

The provision is also necessary because the Trade Agreements Act of 1979, provided for appeals to the Court of Customs and Patent Appeals from the orders of the Customs Court granting, continuing, modifying, refusing or dissolving or refusing to dissolve or modify an injunction permitted under that Act. Since the bill would broaden the circumstances under which an injunction may be issued by the Court of International Trade, an amendment to the statute governing appeals to the Court of Customs and Patent Appeals is necessary.

Section 502. Section 502(a) is a technical amendment to conform section 1543, concerning appeals from certain decisions of the International Trade Commission to the Court of Customs and Patent Appeals to the changes made in section 337 of the Tariff Act of 1930 by the Trade Act of 1974.

Section 502(b) is a technical amendment so as to reflect the amendment made in section 1543 of title 28 by section 502(a) of the bill.

Section 503. Section 503(a) would add a new section 1546 to chapter 93 of Title 28, United States Code.

Proposed section 1546(a) would provide for the application of the Federal Rules of Evidence in the Court of Customs and Patent Appeals in any appeal from a decision of the Court of International Trade in a civil action in which the Court of International Trade is required to apply the Federal Rules of Evidence.

Proposed section 1546(b) provides that the Court of Customs and Patent Appeals shall have all the powers of law and equity that are possessed by the courts of appeals. This provision parallels proposed section 1585, contained in section 301(a) of the bill, which confirms the fact that the Court of International Trade possesses all the powers in law and equity possessed by the district court of the United States.

Proposed section 1546(c) is a new provision which transfers jurisdiction to review decisions to deny, revoke, or suspend a customs broker's license from the court of appeals to the Court of Customs and Patent Appeals.

Section 503(b) is a technical amendment which amends the tables contained in chapter 93 of title 28 so as to take account of the addition of the new section 1546.

Section 504. Sections 504(a) and (b)(1) provide for the filing of cross-appeals in the Court of Customs and Patent Appeals. This provision is necessary because the current statute does not provide for the filing of cross-appeals, although the Court of Customs and Patent Appeals has developed such a procedure through decisional law.

Proposed section 504(b)(2) would also provide for the elimination of the requirement that a notice of appeal include a concise statement of the errors complained of. This requirements was eliminated in the circuit courts of appeals a number of years ago. Thus, the proposed provision would bring the statute governing appeals to the Court of Customs and Patent Appeals in accord with the statutes governing appeals to the courts of appeals.

Proposed section 504(c) amends the provision for service of notice of appeal to reflect the broader range of Government agencies which could be involved in civil actions in the Court of International Trade.

Proposed section 504(d) specifies that the clearly erroneous rule shall be applied in the Court of Customs and Patents Appeals with respect to findings of fact made by the Court of International Trade. This provision merely makes the Federal rule that is applied in other Federal appellate courts applicable to the Court of Customs and Patent Appeals.

Section 505. This section contains a technical amendment designed to conform the order of precedence of cases in the Court of Customs and Patent Appeals to the order of precedence of cases in the Court of International Trade as set forth in proposed section 2646 contained in section 401(a) of the bill.

Section 506. Section 506(a) specifically authorizes the Court of Customs and Patent Appeals to conduct an annual judicial conference for the purpose of considering the business of the court and improvements in the administration of justice in the court. This provision confirms by statute a practice which the court has developed and parallels the similar provisions authorizing the circuit courts of appeals to conduct annual judicial conferences.

Section 506(b) is a technical amendment to take account of the new provision authorizing the Court of Customs and Patent Appeals to conduct an annual judicial conference.

TITLE VI

Section 601. This section contains a technical amendment made necessary by section 201 of the bill which would change the name of the Customs Court to the Court of International Trade.

Section 602. This section contains a technical amendment made necessary by section 201 of the bill which would change the name of the Customs Court to the Court of International Trade.

Section 603. This section contains a technical amendment made necessary by section 201 of the bill which would change the name of the Customs Court to the Court of International Trade.

Section 621. This section contains a technical amendment made necessary by section 201 of the bill which would change the name of the Customs Court to the United States Court of International Trade.

Section 622. This section contains a technical amendment made necessary by section 201 of the bill which would change the name of the Customs Court to the United States Court of International Trade.

Section 623. This section contains technical amendments made necessary by section 201 of the bill which would change the name of the Customs Court to the Court of International Trade or the United States Court of International Trade each time it appears.

Section 624. This section contains a technical amendment made necessary by section 201 of the bill which would change the name of the Customs Court to the United States Court of International Trade.

Section 625. This section contains a technical amendment made necessary by section 201 of the bill which would change the name of the Customs Court to the United States Court of International Trade.

Section 626. This section contains a technical amendment made necessary by section 201 of the bill which would change the name of the Customs Court to the United States Court of International Trade.

Section 627. This section contains a technical amendment made necessary by section 201 of the bill which would change the name of the Customs Court to the Court of International Trade.

Section 628. This section contains a technical amendment made necessary by section 201 of the bill which would change the name of the Customs Court to the Court of International Trade.

TITLE VII

Section 701. This section contains conforming amendments to conform certain provisions relating to judicial review contained in section 337 of the Tariff Act of 1930 to certain changes made in that section by the Trade Act of 1974.

Prior to its amendment by section 341 of the Trade Act of 1974, section 337 provided that Court of Customs and Patent Appeals review was to be limited to "a question or questions of law only". Under that preexisting law, appeals were to be taken "within such time after the Commission findings are made and in such a manner as appeals may be taken from decisions of the United States Customs Court". The analog of these provisions in the Judicial Code, 28 U.S.C. 1543, similarly provided, and still does today, that such appeals are "on questions of law only". The language of these two provisions was traditionally thought to limit any court scrutiny of section 337 decisions to the narrow test of whether the Commission determinations were contrary to law or arbitrary and capricious.

Section 341 of the Trade Act of 1974, Public Law 93-618, amended section 337, but the provisions of the Judicial Code were not. Under that amendment, the Congress provided in section 337 that—

any person adversely affected by a final determination of the Commission under subsection (d) or (e) of this section may appeal such determination to the United States Court of Customs and Patent Appeals. Such Court will have jurisdiction to review such determination in the same manner and

subject to the same limitations and conditions as in the case of appeals from decisions from the United States Customs Court.

Also in section 341 of the Trade Act, Congress amended section 337 so as to make its proceedings subject to the adjudicative provisions of the Administrative Procedures Act (APA).

The legislative history is silent on the standard of judicial review intended in the Trade Act changes to section 337, but given the context of making 337 proceedings subject to the APA, it would appear that Congress intended the Court to review section 337 determinations on the standard applicable in APA adjudications (that the agency had not acted contrary to the substantial evidence of record) which is of course broader than the "arbitrary and capricious" standard previously in effect.

However, in a recent decision of the Court of Customs and Patent Appeals in a challenge to a section 337 action, *Solder Removal Company v. U.S. International Trade Commission*, 582 F.2d 628 (C.C.P.A. 1978), the Court applied a third standard. This standard, applicable in appeals to the Court of Customs and Patent Appeals from the Customs Court, is, whether the Commission's decision was not "clearly contrary to the weight of the evidence." This takes the Court's inquiry into Commission section 337 determinations further than was intended by Congress in the changes that were enacted by the Trade Act of 1974, as witnessed by the fact that Congress left on the books the provisions in the Judicial Code (28 U.S.C. 1543) limiting the CCPA to "questions of law only."

The effect of the change in section 701 will be to subject section 337 adjudicative determinations to the substantial evidence test of the APA. The references to Commission determinations under subsections (3), (e), and (f) of section 337 reflects the distinction between a determination by the Commission on violation consequent to an adjudicative proceeding a finding by the Commission in a nonadjudicative context concerning public interest, remedy or bonding. The intention of Congress in having the Commission, in the event of an affirmative determination of violation, make certain additional nonadjudicative findings was to protect the public from exceptional negative consequences if a remedy were imposed in a particular instance. The Commission's actions in this regard to protect public policy are not based on an evidentiary record and so cannot be subject to standards of review, such as substantial evidence, suitable for adjudicative determinations. These nonadjudicative findings should only be reviewable for being arbitrary, capricious, or otherwise abusing discretion. The new final sentence of section 337(c) has been added to remove any possible misunderstanding concerning the appropriate scope of review of these nonadjudicative findings.

Section 341 of the Trade Act of 1974 did not make a provision for appealing cease and desist orders issued by the Commission pursuant to section 337(f), although it did provide for appeals from product exclusion orders issued pursuant to section 337(d) and from temporary product exclusion orders during the course of the Commission's investigation under section 337(e). The addition of a reference to section 337(f) was a technical correction made in section 1105(c) of the Trade Agreements Act of 1979.

Section 702. This section contains a technical amendment made necessary by proposed section 2636(c) contained in section 401(a) of the bill.

Section 703. This section contains a technical amendment made necessary by proposed section 2643(e) contained in section 401(a) of the bill.

Section 704. This section contains a technical amendment made necessary by the fact that although the Trade Agreements Act of 1979 required a party commencing suit under section 516A of the Tariff Act of 1930 to notify all interested parties, the Act did not empower the court to prescribe rules relating to the form, style or content of the notice or the time within which notice must be given.

Section 705. This section contains a technical amendment made necessary by proposed section 1582 contained in section 301(a) of the bill.

Section 706. This section contains technical amendments made necessary by proposed section 503(a) of the bill.

Section 707. This section contains technical amendments made necessary by proposed section 1581(e) contained in section 301(a) of the bill.

Section 708. This section contains an amendment to 28 U.S.C. 518(a). The existence of a central organization within the Government which will serve as the coordinator of the positions taken by the Government in suits in the Court of International Trade.

Section 709. This section contains an amendment to 28 U.S.C. § 751. The Court of International Trade possesses nationwide jurisdiction. This section provides that when the court sits in a judicial district other than the Southern and Eastern Districts of New York (the courthouse utilized by the United States Customs is located in the Southern District of New York), the clerk of the district in which the court is sitting shall serve as the Clerk of the Court of International Trade.

Section 710. This section contains a technical amendment to 28 U.S.C. § 1331(a) which is necessary in order to clarify the demarcation between the jurisdiction of the district courts and the Court of International Trade.

Section 711. This section contains a technical amendment to 28 U.S.C. § 1337 which is necessary in order to clarify the demarcation between the jurisdiction of the district courts and the Court of International Trade.

Section 712. This section contains an amendment to 28 U.S.C. § 1355 made necessary by proposed section 1582 contained in section 301(a) of the bill.

Section 713. This section contains an amendment to 28 U.S.C. § 1356 made necessary by proposed section 1582 contained in section 301(a) of the bill.

Section 714. This section contains a technical amendment to 28 U.S.C. § 1491 which is necessary in order to clarify the demarcation between the jurisdiction of the Court of Claims and the Court of International Trade.

Section 715. This section contains an amendment to 28 U.S.C. § 1919. Since one purpose of the bill is to provide the Court of International Trade with the powers of a district court, this section is designed to

empower the Court of International Trade to award costs in the same circumstances in which costs could be awarded by a district court.

Section 716. This section contains a technical amendment to 28 U.S.C. § 1963. Section 1963 of title 28, United States Code, provides for the registration of judgments for money entered in one judicial district in another judicial district. Pursuant to proposed section 2643(a) of title 28, as contained in section 401(a) of the bill, the Court of International Trade would be empowered to render a money judgment for or against the United States. Therefore, section 610 of the bill amends the registration provisions of 28 U.S.C. § 1963 so as to permit the registration judgments of the Court of International Trade.

Section 717. This section contains an amendment to 28 U.S.C. § 2414. Pursuant to proposed section 1643(a) contained in section 401(a) of the bill, the Court of International Trade will be empowered to enter money judgments against the United States. The amendment contained in section 717 would permit the payment of these judgments in the same manner as the payment of other money judgments against the United States.

Section 718. This section contains the specification of the effective dates of the bill.

Subsection (a) (1) of section 718 provides that the Act shall become effective on the same date on which Title VII of the Tariff Act of 1930, as added by Title I of the Trade Agreements Act of 1972.

Subsection (a) (1) states that the amendments made by section 506 of this Act relating to the judicial conferences of the Court of Customs and Patent Appeals shall become effective on October 1, 1980.

Subsection (b) of section 718 provides that no case pending in the Customs Court or the Court of Customs and Patent Appeals shall be dismissed because of the enactment of the Customs Courts Act of 1979.

Subsection (c) (1) of section 718 is designed to ensure that review of administrative determinations made before January 1, 1980, under section 303 of the Tariff Act of 1930 or the Antidumping Act, 1921 by the Court of International Trade or the Court of Customs and Patent Appeals shall be based on the law as it existed on the date of such determination.

Subsection (c) (2), as an exception to (c) (1), is designed to ensure that the scope of review and procedures of the review by the Court of International Trade and the Court of Customs and Patent Appeals shall be governed by the provisions of, and amendments made by, this Act.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXXIX of the Standing Rules of the Senate, changes in existing law by the bill, as reported, are shown as follows: (Existing law in which no changes are proposed is shown in Roman, existing law proposed to be repealed is enclosed in black brackets, and new matter is printed in italic. For purposes of expediency and clarity, those sections of existing law proposed to be repealed in Chapters 95, 196 of title 28, United States Code, will not be included in this report).

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

TABLE OF CONTENTS

PART I.—ORGANIZATION OF COURTS			
Chapter			Beginning section
11.	【Customs Court】	<i>United States Court of International Trade</i> -----	251
PART III.—COURT OFFICERS AND EMPLOYEES			
55.	【Customs Court】	<i>United States Court of International Trade</i> -----	871
169.	【Customs Court】	<i>United States Court of International Trade</i>	
Chapter 11.—【Customs Court】 <i>United States Court of International Trade</i>			

§ 251. *Appointment and number of judges; offices*

(a) *The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court of record to be known as the United States Court of International Trade. The court is a court established under Article III of the Constitution of the United States.*

(b) (1) *The chief judge shall be the judge in regular active service who is senior in commission of those judges who—*

(A) *are sixty-four years of age or under;*

(B) *have served for at least one year as judge of the court; and*

(C) *have not served previously as chief judge.*

(2) (A) *In any case in which no judge meets the qualifications under paragraph (1), the youngest judge in regular active service who is sixty-five years of age or over and who has served as a judge of the court for at least one year shall act as the chief judge.*

(B) *In any case under subparagraph (A) in which there is no judge in regular active service who has served as a judge for more than one year, the judge in regular active service who is senior in commission and who has not served previously as chief judge shall act as the chief judge.*

(3) (A) *Except as provided in subparagraph (C), a chief judge shall serve for a term of seven years, and may continue to serve after the expiration of such term until another judge is eligible to serve as chief judge under paragraph (1).*

(B) *Except as provided in subparagraph (C), a judge acting as chief judge under subparagraph (A) or (B) of paragraph (2) shall serve until another judge is eligible to serve as chief judge under paragraph (1).*

(C) *A judge may not serve or act as chief judge after attaining the age of seventy years unless no other judge is eligible to serve as chief judge under paragraph (1) or is eligible to act as chief judge under paragraph (2).*

(c) *If the chief judge desires to be relieved of his duties as chief judge while retaining his active status as a judge, he may so certify*

to the Chief Justice of the United States, and thereafter, the chief judge of the court shall be such other judge who is qualified to serve or act as the chief judge under subsection (b).

(d) The offices of the court shall be located at the port of New York.

§ 252. Tenure and salaries of judges

Judge of the [Customs Court] *Court of International Trade* shall hold office during good behavior. Each shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361), or adjusted by section 461 of this title [28 § 461].

§ 253. Duties of chief judge; precedence of judges

(a) The chief judge of the [Customs Court] *Court of International Trade* with the approval of the court, shall supervise the fiscal affairs and clerical force of the court;

* * * * *

§ 254. Single-judge trials

Except as otherwise provided in section 255 of this title, the judicial power of the [Customs Court] *United States Court of International Trade* with respect to any action, suit or proceeding shall be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

§ 255. Three-judge trials

(a) Upon application of any party to a civil action, or upon his own initiative, the chief judge of the [Customs Court] *United States Court of International Trade* shall designate any three judges of the court to hear and determine any civil action which the chief judge finds: (1) raises an issue of the constitutionality of an Act of Congress, a proclamation of the President or an Executive order; or (2) has broad or significant implications in the administration or interpretation of the customs laws.

* * * * *

Chapter 13.—Assignment of Judges to Other Courts

* * * * *

§ 293. Judges of other courts

(b) The Chief Justice of the United States may designate and assign temporarily any judge of the [Customs Court] *United States Court of International Trade* to perform judicial duties [in a district court in any circuit upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.] *in any circuit, either in a court of appeals or district court, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit in which the need arises.*

(c) The chief judge of the Court of Customs and Patent Appeals may, upon presentation to him by the chief judge of the [Customs Court] *United States Court of International Trade* of a certificate of necessity, designate and assign temporarily any judge of the Court of Customs and Patent Appeals to serve as a judge of the [Customs Court] *United States Court of International Trade*.

(d) [The chief judge of the Customs Court may, upon presentation to him by the chief judge of the Court of Customs, and Patent Appeals of a certificate of necessity, designate and assign temporarily any judge of the Customs Court to serve as a judge of the Court of Customs and Patent Appeals.] *The chief judge of the Court of International Trade may, upon presentation to him of a certificate of necessity by the chief judge of the Court of Customs and Patent Appeals or the chief judge of the Court of Claims, designate and assign temporarily any judge of the Court of International Trade to serve as a judge of the Court of Customs and Patent Appeals or the Court of Claims.*

* * * * *

CHAPTER 31.—THE ATTORNEY GENERAL

* * * * *

§ 518. Conduct and argument of cases

(a) Except when the Attorney General in a particular case directs otherwise, the Attorney General and the Solicitor General shall conduct and argue suits and appeals in the Supreme Court and suits in the Court of Claims and in the *Court of International Trade* in which the United States is interested.

* * * * *

CHAPTER 37.—UNITED STATES MARSHAL

* * * * *

§ 569. Powers and duties generally; supervision by Attorney General

(a) The United States marshal of each district is the marshal of the district court and of the court of appeals when sitting in his district, and of the [Customs Court] *United States Court of International Trade* holding sessions in his district elsewhere than in the Southern and Eastern Districts of New York, and may, in the discretion of the respective courts, be required to attend any session of court.

* * * * *

CHAPTER 41.—ADMINISTRATIVE OFFICE OF THE UNITED STATES

* * * * *

§ 605. Budget estimates

The Director, under the supervision of the Judicial Conference of the United States, shall submit to the Bureau of the Budget annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the courts and the Administrative Office and the operation of the judicial survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. The Director shall cause periodic examinations of the judicial survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the Director to the Judicial Conference.

Such estimates shall be approved, before presentation to the Bureau of the Budget, by the Judicial Conference of the United States, except

that the estimate with respect to the **【Customs Court】** *United States Court of International Trade* shall be approved by such court.

* * * * *

CHAPTER 49.—DISTRICT COURTS

§ 751. Clerks

* * * * *

(f) *When the Court of International Trade is sitting in a judicial district other than the Southern and Eastern Districts of New York, the clerk of that district court or an authorized deputy clerk, upon the request of the chief judge of the Court of International Trade and with the approval of that district court, shall act in the district as clerk of the Court of International Trade in accordance with the rules and orders of the Court of International Trade for all purposes relating to any case pending before the court.”.*

* * * * *

Chapter 55.—**【Customs Court】** *United States Court of International Trade*

§ 871. Clerk, chief deputy clerk, assistant clerk, deputies, assistants, and other employees

The **【Customs Court】** *United States Court of International Trade* may appoint a clerk, a chief deputy clerk, an assistant clerk, deputy clerks, and such deputies, assistants, and other employees as may be necessary for the effective dispatch of the business of the court, who shall be subject to removal by the court.

* * * * *

§ 873. Criers, bailiffs, and messengers

The **【Customs Court】** *United States Court of International Trade* may appoint such criers as it may require for said court, which criers shall also perform the duties of bailiffs and messengers and such other duties as the court directs and shall be subject to removal by the court.

* * * * *

CHAPTER 85.—DISTRICT COURTS JURISDICTION

§ 1331. Federal question; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States, except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity. *The district court shall not possess jurisdiction under this section over any matter within the exclusive jurisdiction of the Court of International Trade.*

* * * * *

§ 1337. Commerce and anti-trust regulations; amount in controversy, costs

* * * * *

(c) *The district courts shall not possess jurisdiction under this section over any matter within the exclusive jurisdiction of the Court of International Trade.*

* * * * *

§ 1340. Internal revenue; customs duties

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage, except matters within the jurisdiction of the [Customs Court] *United States Court of International Trade.*

* * * * *

§ 1355. Fine, penalty or forfeiture

The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress. *The Court of International Trade shall have jurisdiction of any such action or proceeding commenced in such court under section 1582 of this title.*

§ 1356. Seizures not within admiralty and maritime jurisdictions

The district courts shall have original jurisdiction, exclusive of the courts of the States, of any seizure under any law of the United States on land or upon waters not within admiralty and maritime jurisdiction. *The Court of International Trade shall have jurisdiction of any such action or proceeding commenced in such court under section 1582 of this title.*

* * * * *

Chapter 91.—Court of Claims

§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States. To provide an entire remedy and to complete the relief afforded by the judgement, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Claims shall have jurisdiction to render judgment upon any claim by or against, or

dispute with, a contractor arising under the Contract Disputes Act of 1978.

Nothing herein shall be construed to give the Court of Claims jurisdiction in suits *within the exclusive jurisdiction of the Court of International Trade*, or against, or founded on actions of, the Tennessee Valley Authority, nor to amend or modify the provisions of the Tennessee Valley Authority Act of 1933, as amended [16 USCS §§ 831 et seq.], with respect to suits by or against the Authority.

* * * * *

Chapter 93.—Court of Customs and Patent Appeals

Sec.

- 1541. Appeals from **【Customs Court】** *Court of International Trade* decisions.
- 1542. Patent Office decisions.
- 1543. **【Tariff Commission decisions】** *International Trade Commission determinations.*
- 1544. Certain findings by Secretary of Commerce.
- 1545. Decision of the Plant Variety Protection Office.
- 1546. *Rules of evidence; powers in law and equity; exclusive jurisdiction.*

§ 1541. Appeals from Customs Court decisions

(a) The Court of Customs and Patent Appeals has jurisdiction of appeals from all final judgments or orders of the United States **【Customs Courts】** *Court of International Trade* [and from any interlocutory order granting, continuing, modifying, refusing or dissolving an injunction, under section 516A(c)(2) of the Tariff Act of 1930].

(b) When the chief judge of the **【Customs Court】** *United States Court of International Trade* issues an order under the provisions of section 256(b) of this title; or when any judge in the **【Customs Court】** *United States Court of International Trade*, in issuing any other interlocutory order, includes in the order a statement that a controlling question of law is involved as to which there is substantial ground for difference of opinion and that an immediate appeal from its order may materially advance the ultimate termination of the litigation, the Court of Customs and Patent Appeals may, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: *Provided, however,* That neither the application for nor the granting of an appeal hereunder stays proceedings in the **【Customs Court】** *United States Court of International Trade* unless a stay is ordered by a judge of the **【Customs Court】** *United States Court of International Trade* or by the Court of Customs and Patent Appeals or a judge of that court.

(c) *The Court of Customs and Patent Appeals has exclusive jurisdiction of any appeal from an interlocutory order of the Court of International Trade granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions.*

* * * * *

§ 1543. Tariff Commission decisions

The Court of Customs and Patent Appeals shall have jurisdiction to review, by appeal on questions of law only, the findings of the United States Tariff Commission (United States International Trade Commission) as to unfair practices in import trade, made under section 1337 of Title 19】

§ 1543. *International Trade Commission determinations*

The Court of Customs and Patent Appeals shall have jurisdiction to review the determinations of the United States International Trade Commission made under section 337 of the Tariff Act of 1930 relating to unfair trade practices in import trade.

* * * * *

§ 1546. *Rules of evidence; powers in law and equity; exclusive jurisdiction*

(a) *Except as provided in section 2639 of this title, subsection (b) of section 2641 of this title; or any rules prescribed by the Court of Customs and Patent Appeals, the Federal Rules of Evidence shall apply in the Court in any appeal from the Court of International Trade.*

(b) *The Court of Customs and Patent Appeals shall have all the powers in law and equity of, or as conferred by statute upon, the courts of appeals of the United States.*

(c) *The Court of Customs and Patent Appeals has exclusive jurisdiction to review—*

(1) *any decision of the Secretary of the Treasury to deny or revoke a customs brokers' license under section 641(a) of the Tariff Act of 1930; and*

(2) *any action challenging an order to revoke or suspend a license under section 641(b) of the Tariff Act of 1930.*

Chapter 95.—Court of International Trade

Sec.

1581. *Civil actions against the United States.*

1582. *Civil actions commenced by the United States.*

1583. *Counterclaims.*

1584. *Cure of defects.*

1585. *Powers generally.*

§ 1581. *Civil actions against the United States*

(a) (1) *The Court of International Trade shall have exclusive jurisdiction of any civil action commenced by any person whose protest under the Tariff Act of 1930 has been denied, in whole or in part, by the appropriate customs officer, if the administrative decision, including the legality of all orders and findings entering into the protest, involves—*

(A) *the appraised value of merchandise;*

(B) *the classification, rate, and amount of duties chargeable;*

(C) *all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;*

(D) *the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody (including notice of constructive seizure) under any provisions of the customs laws, except a determination appealable under section 337 of the Tariff Act of 1930;*

(E) *the liquidation or reliquidation of an entry, or a modification thereof;*

(F) *the refusal to pay a claim for drawback; or*

(G) *the refusal to reliquidate an entry under section 520(c) of the Tariff Act of 1930.*

(2) Section 516A of the Tariff Act of 1930 provides exclusive remedy for any determination subject to judicial review under such section, and such a determination is not otherwise reviewable under this subsection or any other provision of law.

(b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 or 516A of the Tariff Act of 1930.

(c) (1) After the decision of the President has been published in the Federal Register, the Court of International Trade shall have exclusive jurisdiction to review advice, findings, recommendations, and determinations of the International Trade Commission under sections 131, 201, 202, 203, 304, 406, and 503 of the Trade Act of 1974, sections 336 and 338 of the Tariff Act of 1930, and section 22 of the Agricultural Adjustment Act, solely for the purposes of determining the procedural regularity of those actions.

(2) In no advice, findings, recommendations, or determinations have been provided to the President by the International Trade Commission, the Court of International Trade shall have exclusive jurisdiction to review any action of the commission under the sections specified in paragraph (1) of this subsection, solely for the purposes of determining the procedural regularity of those actions.

(d) After the decision of the President has been published in the Federal Register, the Court of International Trade shall have exclusive jurisdiction to review any action of the Office of the Special Trade Representative under section 302(b) (1) or 304 of the Trade Act of 1974, solely for the purposes of determining the procedural regularity of those actions.

(e) The Court of International Trade shall have exclusive jurisdiction of any civil action to review any determination of the Secretary of Labor or the Secretary of Commerce certifying or refusing to certify workers, communities, or businesses as eligible for adjustment assistance under the Trade Act of 1974. No injunction or writ of mandamus shall be issued in any civil action arising under this subsection.

(f) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced by a party-at-interest to review a final determination made under section 305(b) (1) of the Trade Agreements Act of 1979.

(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 777(c) (2) of the Tariff Act of 1930.

(h) (1) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a) through (g) of this section and subject to the exceptions provided in subsection (i), the Court of International Trade shall have exclusive jurisdiction over any civil action against the United States, its agencies or its officers, which—

(A) arises directly from import transactions; and

(B) (i) involves the Tariff Act of 1930, the Trade Expansion Act of 1962, the Trade Act of 1974, or the Trade Agreements Act of 1979; or

(ii) a provision of—

“(I) the Constitution of the United States;

“(II) a treaty of the United States;

“(III) an executive agreement executed by the President; or

“(IV) an executive order of the President, which directly and substantially involves international trade.”

(2) Section 516A of the Tariff Act of 1930 provides exclusive remedy for any determination subject to judicial review under such section, and such a determination is not otherwise reviewable under this subsection or any other provision of law.

(i) (1) The Court of International Trade shall not have jurisdiction—

(A) of any civil action arising under section 305 of the Tariff Act of 1930;

(B) subject to the provisions of paragraph (2), to review any ruling or refusal to issue or to change a ruling relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, and similar matters issued by the Secretary of the Treasury under applicable regulations other than in connection with a civil action commenced under subsection (a) of this section; or

(C) of any civil action with respect to any effort by the United States to recover a civil fine or penalty or to enforce a forfeiture, to recover upon a bond, or to recover customs duties, other than as specified in section 1582 of this title.

(2) Paragraph (1)(B) shall not apply if a plaintiff demonstrates that, without a substantial doubt, (A) it would be commercially impractical to obtain judicial review under subsection (a) of this section; and (B) the plaintiff would otherwise suffer irreparable injury. If the plaintiff fulfills the conditions set forth in the preceding sentence and demonstrates that the Secretary's ruling or refusal to issue or to change a ruling is arbitrary or capricious or otherwise contrary to law, the court shall award appropriate declaratory relief.

§ 1582. Civil actions commenced by the United States

(a) Subject to the provisions of subsections (b) and (c) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced by the United States under section 592, 704(i) (2), or 734(i) (2) of the Tariff Act of 1930.

(b) (1) Any party to a civil action described in subsection (a) who desires to have the action tried before a jury may, within 30 days after the action is commenced in the Court of International Trade, file a motion with the clerk of the court requesting a transfer of the action to an appropriate district court.

(2) The Court of International Trade shall promptly order the action transferred to the appropriate district court if the court determines that the moving party is entitled to a trial by jury in such action.

(c) Within 10 days after the issuance of an order of transfer under subsection (b) (2), the clerk of the Court of International Trade shall transmit all pleadings and documents to the clerk of the appropriate district court. The action shall proceed as if it had been commenced

in the district court in the first instance, and the court shall determine the matter de novo.

(d) The relevant provisions of sections 2461 through 2465 of this title, section 592(e) of the Tariff Act of 1930, and the Federal Rules of Evidence shall apply in any action commenced in the Court of International Trade or transferred to a district court under this section.

§ 1583. Counterclaims

The Court of International Trade shall have jurisdiction to render judgment upon any counterclaim asserted by the United States—

(1) which arises out of an import transaction pending before the court;

(2) to recover upon a bond relating to an import transaction pending before the court; or

(3) to recover customs duties relating to an import transaction pending before the court.

§ 1584. Cure of defects

(a) If a civil action within the exclusive jurisdiction of the Court of International Trade is commenced in a district court, the district court shall, in the interest of justice, transfer such civil action to the Court of International Trade, where the action shall proceed as if it had been commenced in the Court of International Trade in the first instance.

(b) If a civil action within the exclusive jurisdiction of a district court or a court of appeals is commenced in the Court of International Trade, the Court of International Trade shall, in the interest of justice, transfer such civil action to the appropriate district court or court of appeals, where the civil action shall proceed as if it had been commenced in the district court or court of appeals in the first instance.

§ 1585. Powers generally

The Court of International Trade shall possess all the powers in law and equity of, or as conferred by statute upon, a district court of the United States.

* * * * *

Chapter 123.—Fees and Costs

* * * * *

§ 1919. District courts; dismissal for lack of jurisdiction

Whenever any action or suit is dismissed in any district court or the Court of International Trade for want of jurisdiction, such court may order the payment of just costs.

* * * * *

Chapter 125.—Pending Actions and Judgments

* * * * *

§ 1963. Registration in other districts

A judgment in an action for the recovery of money or property now or hereafter entered in any district court or in the Court of International Trade which has become final by appeal or expiration of time for appeal may be registered in any other district by filing therein a certified copy of such judgment. A judgment so registered shall have

the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any district in which the judgment is a lien.

* * * * *

Chapter 161.—United States as Party Generally

* * * * *

§ 2414. Payment of judgments and compromise settlements

Except as provided by the Contracts Disputes Act of 1978, payment of final judgments rendered by a district court against the United States shall be made on settlements by the General Accounting Office. Payment of final judgments rendered by a State or foreign court or *Court of International Trade* or tribunal against the United States, or against its agencies or officials upon obligations or liabilities of the United States, shall be made on settlements by the General Accounting Office after certification by the Attorney General that it is in the interest of the United States to pay the same.

Whenever the Attorney General determines that no appeal shall be taken from a judgment or that no further review will be sought from a decision affirming the same, he shall so certify and the judgment shall be deemed final.

Except as otherwise provided by law, compromise settlements of claims referred to the Attorney General for defense of imminent litigation or suits against the United States, or against its agencies or officials upon obligations or liabilities of the United States, made by the Attorney General or any person authorized by him, shall be settled and paid in a manner similar to judgments in like causes and appropriations or funds available for payment of such judgments are hereby made available for the payment of such compromise settlements.

* * * * *

Chapter 167.—Court of Customs and Patent Appeals Procedure

Sec.

2601. Appeals from **【Customs Court】** *United States Court of International Trade*

2602. **【Precedence of American manufacturer, producer, or wholesaler cases】**
Precedence of cases

2603. *Judicial conference*

§ 2601. Appeals from **【Customs Court】** *United States Court of International Trade* decisions

(a) A party may appeal to the Court of Customs and Patent Appeals from a final judgment or order of the **【Customs Court】** *United States Court of International Trade* within sixty days after entry of the judgment or order. *If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen days after the date on which the first notice of appeal was filed.*

(b) An appeal is made by filing in the office of the clerk of the Court of Customs and Patent Appeals a notice of appeal or *cross appeal* **【which shall include a concise statement of the errors complained of】**. A copy of the notice shall be served on the adverse parties. When the United States is an adverse party service shall be made on the At-

torney General *and any named official*. [and the Secretary of the Treasury of their designees.] Thereupon, the Court of Customs and Patent Appeals shall order the [Customs Court] *United States Court of International Trade* to transmit the record and evidence taken, together with either the findings of fact and conclusions of law or the opinion, as the case may be.

(c) The Court of Customs and Patent Appeals may affirm, modify, vacate, set aside, or reverse any judgment or order of the [Customs Court] *United States Court of International Trade* lawfully brought before it for review, and may remand the cause and direct the entry of an appropriate judgment or order, or require such further proceedings as may be just under the circumstances. *Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the Court of International Trade to judge the credibility of the witnesses. A party may raise on appeal the question of whether findings of fact are clearly erroneous, whether or not the party raising the questions made an objection to such findings in the Court of International Trade or made a motion to amend such findings.* The judgment or order of the Court of Customs and Patent Appeals shall be final and conclusive unless modified, vacated, set aside, reversed, or remanded by the Supreme Court under section 2106 of this title (28 USCS § 2106).

§ 2602. Precedence of cases

(a) *A civil action involving the exclusion of perishable merchandise shall be given precedence over other civil actions pending before the Court of Customs and Patent Appeals, and shall be assigned for hearing at the earliest practicable date and expedited in every way.*

(b) *Except those civil actions given precedence under subsection (a), a civil action for the review of a determination under section 516A (a) (1) (B) or under section 516A (a) (1) (E) of the Tariff Act of 1930 shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way.*

(c) *Except those civil actions given precedence under subsection (a) or (b), a civil action involving the exclusion or redelivery of merchandise arising under section 1581 of this title or under 516 or 516A of the Tariff Act of 1930, shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way.*

(d) *Except those civil actions given precedence under subsection (a), (b), or (c), an appeal from findings of the Secretary of Commerce provided for in headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States (19 U.S.C. 1202) shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way.*

§ 2603. Judicial conference

The Court of Customs and Patent Appeals is authorized to conduct an annual judicial conference for the purposes of considering the business of the court and improvements in the administration of justice in the court.

Chapter 169.—Court of International Trade Procedure

Sec.

- 2631. *Persons entitled to commence a civil action.*
- 2632. *Commencement to a civil action.*
- 2633. *Procedure and fees.*
- 2634. *Notice.*
- 2635. *Filing of official documents.*
- 2636. *Time for commencement of action.*
- 2637. *Exhaustion of administrative remedies.*
- 2638. *New grounds in support of a civil action.*
- 2639. *Burden of proof; evidence of value.*
- 2640. *Scope and standard of review.*
- 2641. *Witnesses; inspection of documents.*
- 2642. *Analysis of imported merchandise.*
- 2643. *Relief.*
- 2644. *Decisions; findings of fact and conclusions of law; effect of decisions.*
- 2645. *Retrial or rehearing.*
- 2646. *Precedence of cases.*

§ 2631. *Persons entitled to commence a civil action*

(a) *A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed the protest under section 514 of the Tariff Act of 1930, or by his estate, heirs, or successors or by a surety of such person in the transaction which is the subject of the protest.*

(b) *A civil action contesting the denial, in whole or in part, of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the domestic interested party who filed the petition or his estate, heirs, or successors.*

(c) *A civil action contesting a determination listed in section 516A of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who is a party to the administrative proceeding or his estate, heirs, or successors.*

(d) *A civil action to review a final determination made under section 305 (b) (1) of the Trade Agreements Act of 1979 may be commenced in the Court of International Trade by any party-at-interest.*

(e) *A civil action involving an application for an order to make confidential information available under section 777 (c) (2) of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who is a party to the investigation.*

(f) *A civil action, other than a civil action specified in subsection (a) through (e) of this section, may be commenced in the Court of International Trade by any person adversely affected or aggrieved by an agency action within the meaning of section 702 of title 5, United States Code.*

(g) *Except in civil actions commenced under section 1581 (a) of this title or section 516 of the Tariff Act of 1930, any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in that civil action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.*

(h) *Any person who is a party to the investigation and would be adversely affected or aggrieved by a decision in a civil action involving an order to make confidential information available under*

777(c) (2) of the Tariff Act of 1930 may, by leave of court, intervene in that civil action.

(i) For the purposes of this section, the term—

(1) 'interested party' means—

(A) a foreign manufacturer, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under title VII of the Tariff Act of 1930, or a trade or business association the majority of the members of which are importers of such merchandise;

(B) the government of a country in which such merchandise is produced or manufactured;

(C) a manufacturer, producer, or wholesaler in the United States of a like product;

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product; and

(E) a trade or business association the majority of whose members manufacture, produce, or wholesale a like product in the United States;

(2) domestic interested party means a party as defined in subparagraphs (C), (D), and (E) of paragraph (2);

(3) party-at-interest means—

(A) a foreign manufacturer, producer, or exporter, or a United States importer, of merchandise which is the subject of a final determination;

(B) a manufacturer, producer, or wholesaler in the United States of a like product;

(C) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product; and

(D) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States; and

(4) like product means a product which is like, or in the absence of like, most similar in characteristics and uses with the article subject to an investigation under title VII of the Tariff Act of 1930 or a final determination under section 305

(b) (1) of the Trade Agreements Act of 1979.

§ 2632. Commencement of a civil action

(a) Each civil action under section 516 of the Tariff Act of 1930 or section 1581(a) of this title shall be commenced by filing with the clerk of the Court of International Trade a summons, with the content and in the form, manner, and style prescribed by the rules of the court.

(b) Each civil action under section 516A of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons or a summons and a complaint, as prescribed in that section, with the content and in the form, manner, and style prescribed by the rules of the court.

(c) *Except for those civil actions specified in subsections (a) and (b) of this section, all civil actions shall be commenced by filing with the clerk of the court a summons and complaint, with the content and in the form, manner, and style prescribed by the rules of the court.*

(d) *The Court of International Trade may prescribe by rule that any pleading or other paper mailed by registered or certified mail properly addressed to the clerk of the court with the proper postage affixed and return receipt requested shall be deemed filed as of the date of mailing.*

§ 2633. Procedure and fees

(a) *A filing fee shall be payable upon the commencement of an action. The amount of the fee shall be fixed by the Court of International Trade, but shall be not less than \$5 nor more than the filing fee for commencing a civil action in a United States district court. The Court of International Trade may fix all other fees to be charged by the clerk of the court.*

(b) *The Court of International Trade shall prescribe rules governing pleadings and other papers, including their amendment, service, and filing, and for consolidations, severances, suspension of cases, and other procedural matters.*

(c) *All pleadings and other papers filed in the Court of International Trade shall be served on all parties in accordance with the rules prescribed by the court. When the United States, its agencies or its officers are adverse parties, service of the summons shall be made upon the Attorney General and the head of the agencies whose actions are complained of, and when injunctive relief is sought, upon the named officials sought to be enjoined.*

§ 2634. Notice

Reasonable notice of the time and place of trial or hearing before the Court of International Trade shall be given to all parties to any civil action in accordance with the rules prescribed by the court.

§ 2635. Filing of official documents

(a) (1) *Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930, or the denial of a petition under section 516 of that Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules, and as part of the official record—*

- (A) *the consumption or other entry and the entry summary;*
- (B) *the commercial invoice;*
- (C) *the special customs invoice;*
- (D) *a copy of protest or petition;*
- (E) *a copy of the denial of a protest or petition in whole or in part;*
- (F) *any importer's exhibits;*
- (G) *the official and other representative samples;*
- (H) *any official laboratory reports; and*
- (I) *a copy of any bond relating to the entry.*

(2) *If any of the items listed in paragraph (1) do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court.*

(b) (1) In any action commenced under section 516A of the Tariff Act of 1930, within forty days or within such period of time as the Court of International Trade may specify, after service of the complaint upon the administering authority established to administer title VII of the Tariff Act of 1930 or the United States International Trade Commission, the administering authority or the commission shall transmit to the clerk of the court, as prescribed by its rules, the record which, unless otherwise stipulated by the parties, shall consist of—

(A) a copy of all information presented to or obtained by the administering authority or the commission during the course of the administrative proceedings, including all governmental memorandums pertaining to the case and the record of ex parte meetings required to be maintained by section 777(a)(3) of the Tariff Act of 1930; and

(B) a copy of the determination with a statement of reasons, if any, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

(2) Any documents, comments, or information accorded confidential or privileged status and required to be transmitted to the clerk of the Court of International Trade under paragraph (1) shall be transmitted as prescribed by its rules to the clerk of the court under seal, and its confidential or privileged status shall be preserved in the litigation. Any such documents, comments, or information shall be accompanied by a nonconfidential description of the nature of such confidential documents, comments, or information. The court may examine, in camera, the confidential or privileged material and may make such material available under such terms and conditions as the court may order.

(c) Within fifteen days or within such period of time as the Court of International Trade may specify, after service of the complaint upon the administering authority or the commission in a civil action involving an application for an order to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the administering authority or the commission shall transmit, as prescribed by its rules, to the clerk of the court under seal, the confidential information involved together with the pertinent parts of the record.

(d) (1) In any other civil action in which judicial review is based upon the record made before the agency, the agency shall, within forty days or within such time as the Court of International Trade may specify after service of the complaint upon the agency, transmit to the clerk of the court, as prescribed by its rules—

(A) a copy of the contested determination and the findings or report upon which it is based;

(B) a copy of any reported hearings or conferences conducted by the agency; and

(C) any documents, comments, or other papers filed by the public, interested parties, or governments with regard to the agency's action, identifying and transmitting, under seal, any documents, comments, or other information obtained on a confidential basis, including a nonconfidential description of the nature of such confidential documents, comments, or information.

(2) The parties may stipulate that fewer documents, comments, or other information than that specified in paragraph (1) shall be transmitted to the court.

(3) *The confidentiality accorded such documents, comments, and information shall be preserved in the litigation, but the court may examine in camera such documents, comments, and information and may order the disclosure of such documents, comments, or information under such terms and conditions as the court deems appropriate.*

§ 2636. Time for commencement of action

(a) *A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930, is barred unless commenced in accordance with the rules of the Court of International Trade—*

(1) *within one hundred and eighty days after the date of mailing of notice of denial, in whole or in part, of a protest by the Customs Service;*

(2) *if no notice is mailed within the two-year period specified in section 515(a) of the Tariff Act of 1930, within one hundred and eighty days after the date of the expiration of the two-year period specified in such section; or*

(3) *within one hundred and eighty days after the date of denial of a protest by operation of law under the provisions of section 515(b) of the Tariff Act of 1930.*

(b) *A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of mailing of a notice transmitted under section 516(c) of the Tariff Act of 1930.*

(c) *A civil action contesting a determination by the administering authority, under section 703(c) or 733(c) of the Tariff Act of 1930, that a case is extraordinarily complicated is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of the determination in the Federal Register.*

(d) *A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930, other than a determination under section 703(c) or 733(c) of that Act, is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of publication of the determination in the Federal Register.*

(e) *A civil action involving an application for an order to make confidential information available under section 777(c)(2) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of a request for confidential information.*

(f) *A civil action contesting a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the court of International Trade within thirty days after the date of publication of the determination in the Federal Register.*

(g) *A civil action, other than an action specified in subsections (a) through (f) of this section, of which the court has jurisdiction under section 1581 of this title is barred unless commenced in accordance with the rules of the Court of International Trade within two years after the cause of action first accrues.*

§ 2637. Exhaustion of administrative remedies

(a) *A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced only if all liquidated duties, charges, and exactions have been paid at the time the action is commenced, except that a surety's obligation to pay such liquidated duties, charges, and exactions is limited to the sum of any bond relating to each entry included in a denied protest. If a surety commences a civil action in the Court of International Trade, the surety shall recover only the amount of the liquidated duties, charges, and exactions paid on the entries included in the action. The excess amount of any recovery shall be paid to the importer of record, or its estate, heirs, successors, or assigns.*

(b) *A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced only by a person who has first exhausted the procedures specified in that section.*

(c) *In any civil action not specified in this section, the Court of International Trade shall require the exhaustion of appropriate administrative remedies.*

§ 2638. New grounds in support of a civil action

In any case in which the denial, in whole or in part, of a protest is a precondition to the institution of a civil action in the Court of International Trade, the court, by rule, may consider any new ground in support of the civil action if the new ground—

(1) applies to the same merchandise that was the subject of the protest; and

(2) is related to the same administrative determinations listed in section 514 of the Tariff Act of 1930 that were contested in the protest.

§ 2639. Burden of proof; evidence of value

(a) *In any civil action over which the Court of International Trade has jurisdiction under subsection (a) or (b) of section 1581, the determination of the Secretary of the Treasury, the administering authority, or the International Trade Commission, or their delegates, is presumed to be correct. The burden to prove otherwise shall rest upon the party challenging the determination.*

(b) *Where the value of merchandise or any of its components is in issue—*

(1) reports or depositions of consuls, customs officers, and other officers of the United States, and depositions and affidavits of other persons whose attendance cannot reasonably be had may be admitted into evidence when served upon the opposing party in accordance with the rules of the Court of International Trade;

(2) price lists and catalogs may be admitted in evidence when duly authenticated, relevant, and material; and

(3) the value of merchandise shall be determined from the evidence in the record and that adduced at the trial, whether or not the merchandise or sample thereof is available for examination.

(c) *The provisions of subsection (a) shall not apply to any action commenced in the Court of International Trade under section 1582 of this title, unless permitted by the Federal Rules of Evidence.*

§ 2640. Scope and standard of review

(a) *The Court of International Trade shall determine the matter de novo upon the basis of the record made before the court in the following categories of civil actions:*

(1) *Civil actions contesting the denial of a protest under section 515 of the Tariff Act of 1930 involving—*

(A) *except to the extent judicial review is available under subsection (b) of this section in the case of a determination made reviewable under section 516A of the Tariff Act of 1930—*

(i) *the appraised value of merchandise;*
(ii) *the classification, rate, and amount of duties or fees chargeable;*

(iii) *all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury; and*

(iv) *the required redelivery of imports under the terms of an entry bond or the exclusion of merchandise from entry or delivery under the customs laws or under an action of the Customs Service;*

(B) *the refusal to pay a claim for a drawback; and*

(C) *the refusal to reliquidate an entry under section 520 (c) of the Tariff Act of 1930.*

(2) *civil actions commenced under section 516 (c) of the Tariff Act of 1930.*

(3) *Civil actions commenced under section 1581 (f) of this title.*

(4) *Civil actions commenced under section 1581 (g) of this title.*

(5) *Civil actions commenced in the Court of International Trade under section 1582 of this title.*

(b) *In any civil action commenced under section 516A of the Tariff Act of 1930, the court shall review the matter as specified in subsection (b) of that section.*

(c) *In any civil action commenced under subsection (c) or (d) of section 1581 of this title, the court shall review the matter as specified in those subsections.*

(d) *In any civil action commenced under section 1581(e) of this title, the court shall review the matter as specified in section 250 of the Trade Act of 1974. The determination of the Secretary of Commerce under sections 251 and 271 of the Trade Act of 1974 shall be subject to judicial review in the same manner and to the same extent as provided in section 250 of the Trade Act of 1974.*

(e) *In any civil action not specified in this section, the court shall review the matter as provided in section 706 of title 5, United States Code.*

§ 2641. Witnesses; inspection of documents

(a) *Except as otherwise provided by law, in any civil action in the Court of International Trade, the parties and their attorneys shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and all papers admitted or offered as evidence under rules prescribed by the court. Except as provided in section 2639 of this title, subsection (b) of this section, or any rule prescribed by the court, the Federal Rules of Evidence shall apply to all civil actions in the Court of International Trade.*

(b) *The Court of International Trade may order that in any civil action trade secrets and commercial or financial information which is privileged and confidential, or any information provided to the United States by foreign governments or foreign persons, shall not be disclosed or shall be disclosed to a party, its counsel, or any other person, only under such terms and conditions as the court may order.*

§ 2642. Analysis of imported merchandise

The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States.

§ 2643. Relief

(a) *In any civil action commenced under section 1581 or 1582 of this title or in any counterclaim asserted under section 1583 of this title, the Court of International Trade may, if appropriate, enter a judgment for money for or against the United States.*

(b) *In any civil action commenced under section 1581(a) of this title or section 516 of the Tariff Act of 1930, if the Court of International Trade is unable to arrive at the correct determination on the basis of the evidence presented, the court may order such further administrative or adjudicative procedures that the court deems necessary.*

(c) *In any civil action involving an application for an order requiring the administering authority or to the International Trade Commission to make confidential information available under section 777(c) (2) of the Tariff Act of 1930, the court may issue an order of disclosure only with respect to the information specified in that section.*

(d) *In addition to the orders specified in subsections (a), (b), and (c) of this section, the Court of International Trade may order any form of relief which is appropriate, including, but not limited to, declaratory judgments, orders of remand, writs of mandamus, and prohibition and injunction.*

(e) *The Court of International Trade may, in extraordinary circumstances, grant appropriate preliminary or permanent injunctive relief upon the request of a person who, after exhausting all appropriate administrative remedies, would have the right to commence a civil action in the Court of International Trade. In ruling upon such a request, the court shall consider, among other matters, whether the person making the request will be irreparably injured if the relief is not granted, and if so, whether the irreparable injury outweighs the effect that the issuance of the requested injunction would have upon the public interest.*

§ 2644. Decisions; findings of fact and conclusions of law; effect of decisions

(a) *A final decision of the Court of International Trade is a contested civil action or a decision granting or refusing an injunction shall be supported by—*

(1) *A statement of findings of fact and conclusions of law,*
or

(2) *An opinion stating the reasons and facts upon which the decision is based.*

(b) *Upon motion of a party, or upon its own motion, made not later than thirty days after entry of judgment, the court may amend its*

findings or make additional findings and may amend the decision and judgment accordingly.

(c) A decision of the Court of International Trade is final and conclusive, unless a retrial or rehearing is granted under section 2645 of this title or an appeal is taken to the Court of Customs and Patent Appeals within the time and the manner provided in section 2601 of this title.

§ 2645. Retrial or rehearing

After the Court of International Trade has rendered a judgment or order the court may, upon motion of a party or upon its own motion, grant a retrial or rehearing, as the case may be. A party's motion shall be made or the court's action on its own motion shall be taken, not later than 30 days after entry of the judgment or order.

§ 2646. Precedence of cases

(a) A civil action involving the exclusion of perishable merchandise shall be given precedence over other civil actions pending before the Court of International Trade, and shall be assigned for hearing or trial at the earliest practicable date and expedited in every way.

(b) Except those civil actions given precedence under subsection (a), a civil action for the review of a determination under section 516A (a) (1) (B) or under section 516 (a) (1) (E) of the Tariff Act of 1930 shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing or trial at the earliest practicable date and expedited in every way.

(c) Except those civil actions given precedence under subsection (a) or (b), a civil action involving the exclusion or redelivery of merchandise arising under section 1581 of this title or under 516 or 516A of the Tariff Act of 1930, shall be given precedence over other civil actions pending before the court, and shall be assigned for hearing or trial at the earliest practicable date and expedited in every way.

* * * * *

TARIFF ACT OF 1930

* * * * *

TITLE III—SPECIAL PROVISIONS

PART I.—MISCELLANEOUS

§ 305. Immoral articles; importation prohibited

(a) Prohibition of importation.—All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which

is obscene or immoral, or any drug or medicine or any article whatever for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. No such articles, whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the appropriate customs officer that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained shall be subject to seizure and forfeiture as hereinafter provided: Provided, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this subdivision: Provided, further, That the Secretary of the Treasury may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes.

Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the appropriate customs officers to await the judgment of the district court as hereinafter provided; and no protest shall be taken to the United States [Customs Court] *Court of International Trade* from the decision of such customs officer. Upon the seizure of such book or matter such customs officer shall transmit information thereof to the district attorney (U.S. attorney) of the district in which is situated the office at which such seizure has taken place, who shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized. Upon the adjudication that such book or matter thus seized is of the character the entry of which is by this section prohibited, it shall be ordered destroyed and shall be destroyed. Upon adjudication that such book or matter thus seized is not of the character the entry of which is by this section prohibited, it shall not be excluded from entry under the provisions of this section.

In any such proceeding any party in interest may upon demand have the facts at issue determined by a jury and any party may have an appeal or the right of review as in the case of ordinary actions or suits.

* * * * *

PART II.—UNITED STATES TARIFF COMMISSION

§ 337. Unfair practices in import trade

(c) *Determinations; review.*—The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section. Each determination under subsection (d) or (e) shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5, United States Code. All legal and equitable defense may be presented in all cases. Any person adversely affected by a final determination of the Commission under subsection (d), (e) or (f) may appeal such determination to the United States Court of Customs and Patent Appeals, subject to chapter 7 of title 5, *United States Code*. [Such court shall have jurisdiction

to review such determination in the same manner and subject to the same limitations and conditions as in the case of appeals from decisions of the United States Customs Court.] *Notwithstanding the foregoing, review of commission determinations under subsections (d), (e), and (f) as to its findings on the amount and nature of bond, the appropriate remedy, or the effect of such order on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United, and United States consumers, shall be reviewable only for abuse of administrative discretion.*

* * * * *

TITLE IV—ADMINISTRATIVE PROVISIONS

* * * * *

PART III.—ASCERTAINMENT, COLLECTION AND RECOVERY OF DUTIES

* * * * *

§ 502. Regulations for appraisement and classification

* * * * *

(b) *Reversal of Secretary's rulings.*—No ruling or decision once made by the Secretary of the Treasury, giving construction to any imposing customs duties, shall be reversed or modified adversely by the United States, by the same or a succeeding Secretary, except in concurrence with an opinion of the Attorney General recommending the same, or a final decision of the United States [Customs Court] *Court of International Trade.*

* * * * *

§ 503. Dutiable value

Except as provided in section 520(c) (19 USCS § 1520(c)) (relating to reliquidations on the basis of authorized corrections of errors) or section 562 (19 USCS § 1562) (relating to withdrawal from manipulating warehouses) of this Act, the basis for the assessment of duties on imported merchandise subject to ad valorem rates of duty or rates based upon or regulated in any manner by the value of the merchandise, shall be the appraised value determined upon liquidation, in accordance with section 500 (19 USCS § 1500) or any adjustment thereof made pursuant to section 501 of the Tariff Act (19 USCS § 1501): Provided, however, That if reliquidation is required pursuant to a final judgment or order of the United States [Customs Court] *Court of International Trade* which includes a reappraisement of imported merchandise, the basis for such assessment shall be the final appraised value determined by such court.

* * * * *

§ 514. Finality of decisions; protests

(a) *Finality of decisions.*—Except as provided in section 501 (19 USCS § 1501) (relating to voluntary reliquidations), section 516 (19 USCS § 1516) (relating to petitions by American manufacturers, producers, and wholesalers), section 520 (19 USCS § 1521) (relating to reliquidations on account of fraud) of this Act, decisions of the

appropriate customs officer, including the legality of all orders and findings entering into the same, as to—

- (1) The appraised value of merchandise;
- (2) The classification and rate and amount of duties chargeable;
- (3) All charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;
- (4) The exclusion of merchandise from entry or delivery under any provision of the customs law;
- (5) The liquidation or reliquidation of an entry, or any modification thereof;
- (6) The refusal to pay a claim for drawback; and
- (7) The refusal to reliquidate an entry under section 520(c) of this Act (19 USCS § 1520(c)),

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States **【Customs Court】** *Court of International Trade* in accordance with section 2632 of Title 28 of the United States Code (28 USCS § 2632) within the time prescribed by section 2631 of that title. When a judgment or order of the United States **【Customs Court】** *Court of International Trade* has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the appropriate customs officer, who shall take action accordingly.

* * * * *

§ 516. Petitions by Domestic Interested Parties

* * * * *

(d) Notwithstanding the filing of an action pursuant to section 2632 of title 28 of the United States Code, merchandise of the character covered by the published decision of the Secretary (when entered for consumption or withdrawn from warehouse for consumption on or before the date of publication of a decision of the United States **【Customs Court】** *Court of International Trade* or of the United States Court of Customs and Patent Appeals, not in harmony with the published decision of the Secretary) shall be appraised or classified, or both, and the entries liquidated, in accordance with the decision of the Secretary and, except as otherwise provided in this chapter, the final liquidations of these entries shall be conclusive upon all parties.

(e) The consignee or his agent shall have the right to appear and to be heard as a party in interest before the United States **【Customs Court】** *Court of International Trade*.

(f) If the cause of action is sustained in whole or in part by a decision of the United States **【Customs Court】** *Court of International Trade* or of the United States Court of Customs and Patent Appeals, merchandise of the character covered by the published decision of the Secretary, which is entered for consumption or withdrawn from warehouse for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, shall be subject to appraisement, classification, and assessment of duty in accordance with the final judicial decision in the action, and the liquidation of entries covering the merchandise so entered or withdrawn shall be suspended until final disposition is

made of the action, whereupon the entries shall be liquidated, or if necessary, reliquidated in accordance with the final decision. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

* * * * *

§ 516A. Judicial Review in Countervailing duty and Antidumping duty Proceedings

(a) *Review of Determination.*—

(1) *Review of certain determinations.*—Within 30 days or such other time as provided by statute after date of publication in the Federal Register or notice of—

* * * * *

(E) a negative determination by the administering authority under section 703(b) or 733(b) of this Act, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States **【Customs Court】** *Court of International Trade* by filing concurrently a summons and and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) *Review of Determinations of Record.*—

(A) *In General.*—Within thirty days after the date of publication in the Federal Register of—

(i) notice of any determination described in clause (ii), (iii), (iv), or (v) of subparagraph (b), or

(ii) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B), an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States **【Customs Court】** *Court of International Trade* by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

* * * * *

(c) *Liquidation of Entries.*—

(1) *Liquidation in Accordance with Determination.*—Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of the Secretary, the administering authority, or the Commission contested under subsection (a) shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission, if they are entered, or withdraw from warehouse, for consumption on or before the date of publication in the Federal Register by the Secretary or the administering authority of a notice of a decision of the United States **【Customs Court】** *Court of International Trade* or of the United States Court of Customs and Patent Appeals, not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.

* * * * *

(2) *Injunctive relief*.—In the case of a determination described in paragraph (2) of subsection (a) by the Secretary, the administering authority, or the Commission, the United States Customs Court may enjoin the liquidation of some or all entries of merchandise covered by a determination of the Secretary, the administering authority, or the Commission, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances. [In ruling on a request for such injunctive relief, the court shall consider, among other factors, whether—

- (A) The party filing the action is likely to prevail on the merits,
- (B) The party filing the action would be irreparably harmed if liquidation of some or all of the entries is not enjoined,
- (C) The public interest would best be served if liquidation is enjoined, and
- (D) The harm to the party filing the action would be greater if liquidation of some or all of these entries is not enjoined than the harm to other persons if liquidation of some or all of the entries is enjoined.]

In ruling upon a request for such injunctive relief, the court shall consider the factors set forth in section 2643(e) of title 28, United States Code.

* * * * *

(d) *Standing*.—Any interested party who was a party to the proceeding under section 303 of this Act or title VII of this Act shall have the right to appear and be heard as a party in interest before the United States [Customs Court] *Court of International Trade*. [The party filing the action shall notify all interested parties of the filing of an action pursuant to this section.] *The party filing the action shall notify all such interested parties of the filing of an action under this section in the form, manner, style and within the time prescribed by the rules of that court.*

* * * * *

(e) *Liquidation in Accordance with Final Decision*.—If the cause of action is sustained in whole or in part by a decision of the United States [Customs Court] *Court of International Trade* or of the United States Court of Customs and Patent Appeals—

* * * * *

§ 528. Taxes not to be construed as duties

No tax or other charge imposed by or pursuant to any law of the United States shall be construed to be a customs duty for the purpose of any statute relating to customs revenue, unless the law imposing such tax or charge designates it as a customs duty or contains a provision to the effect that it shall be treated as a duty imposed under the customs laws. Nothing in this section shall be construed to limit or restrict the jurisdiction of the United States [Customs Court] *Court of International Trade* or the United States Court of Customs and Patent Appeals.

* * * * *

§ 563. Allowance for loss; abandonment of warehouse goods

(a) *Allowance*.—In no case shall there be any abatement or allowance made in the duties for any injury, deterioration, loss, or damage sustained by any merchandise while remaining in customs custody, except that the Secretary of the Treasury is authorized, upon production of proof satisfactory to him of the loss or theft of any merchandise while in the appraiser's stores, or of the actual injury or destruction, in whole or in part, of any merchandise by accidental fire or other casualty, while in bonded warehouse, or in the appraiser's stores, or while in transportation under bond, or while in the custody of the officers of the customs, although not in bond, or while within the limits of any port of entry and before having been landed under the supervision of the officers of the customs, to abate or refund, as the case may be, the duties upon such merchandise, in whole or in part, and to pay any such refund out of any moneys in the Treasury not otherwise appropriated, and to cancel any warehouse bond or bonds, or enter satisfaction thereon in whole or in part, as the case may be, but no abatement or refund shall be made in respect of injury or destruction of any merchandise in bonded warehouse occurring after the expiration of three years from the date of importation. The decision of the Secretary of the Treasury as to the abatement or refund of the duties on any such merchandise shall be final and conclusive upon all persons.

The Secretary of the Treasury is authorized to prescribe such regulations as he may deem necessary to carry out the provisions of this subdivision and he may by such regulation limit the time within which proof of loss, theft, injury, or destruction shall be submitted, and may provide for the abatement or refund of duties, as authorized herein, by appropriate customs officers in cases in which the amount of abatement or refund claims is less than \$25 and in which the importer has agreed to abide by the decision of the customs officer. The decision of the customs officer in any such case shall be final and conclusive upon all persons.

Any case pending before the United States [Customs Court] *Court of International Trade* upon the effective date of this Act (June 18, 1930), under the provisions of section 563 of the Tariff Act of 1922 may, with the consent of the parties and the permission of the court, be transferred to the Secretary of the Treasury, or to the collector, for consideration and final determination in accordance with the provisions of this subdivision.

* * * * *

PART IV.—ENFORCEMENT PROVISIONS

* * * * *

§ 592. Penalty against goods

(e) [District court proceedings. Notwithstanding any other provision of law, in any proceeding in a United States district court commenced by the United States pursuant to section 604 of this Act (19 USCS § 1604) for the recovery of any monetary penalty claimed under this section—] *Court of International Trade and District Court Proceedings. Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of Inter-*

national Trade or in a United States district court, under section 604 of this Act for the recovery of any monetary penalty claimed under this section, or transferred from the Court of International Trade to a district court under section 1581 of title 28, United States Code—

(1) All issues, including the amount of the penalty, shall be tried *do novo*;

(2) If the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence;

(3) If the monetary penalty is based on gross negligence, the United States shall have the burden of proof to establish all the elements of the alleged violation; and

(4) If the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of proof that the act or omission did not occur as a result of negligence.

* * * * *

PART VI.—MISCELLANEOUS PROVISIONS

* * * * *

§ 641. Customhouse brokers

* * * * *

(b) *Revocation or suspension.*—The appropriate officer of the customs may at any time, for good and sufficient reasons, serve notice in writing upon any customhouse broker so licensed to show cause why said license shall not be revoked or suspended, which notice shall be in the form of a statement specifically setting forth the ground of complaint. The appropriate officer of customs shall within ten days thereafter notify the customhouse broker in writing of a hearing to be held before him within five days upon said charges. At such hearing the customhouse broker may be represented by counsel, and all proceedings including the proof of the charges and the answer thereto, shall be presented, with the right of cross-examination to both parties, and a stenographic record of the same shall be made and a copy thereof shall be delivered to the customhouse broker. At the conclusion of such hearing the appropriate officer of customs shall forthwith transmit all papers and the stenographic report of the hearing, which shall constitute the record of the case, to the Secretary of the Treasury for his action. Thereupon the said Secretary of the Treasury shall have the right to revoke or suspend the license of any customhouse broker shown to be incompetent, disreputable, or who has refused to comply with the rules and regulations issued under this section, or who has, with intent to defraud, in any manner willfully and knowingly deceived, misled, or threatened any importer, exporter, claimant, or client or prospective importer, exporter, claimant, or client, by word, circular, letter or by advertisement.

An appeal may be taken by any licensed customhouse broker from any order of the Secretary of the Treasury suspending or revoking a license. Such appeal shall be taken by filing [in the (circuit) court of

appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, within] *in the Court of Customs and Patent Appeals, within* 60 days after the entry of such order, a written petition praying that the order of the Secretary of the Treasury be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary of the Treasury, or any officer designated by him for that purpose, and thereupon the Secretary of the Treasury shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code (28 USCS § 2112). Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. *For purposes of this paragraph, all relevant rules prescribed in accordance with sections 2072 and 2112 of title 28, United States Code, apply to the Court of Customs and Patent Appeals.* No objection to the order of the Secretary of the Treasury shall be considered by the court unless such objection shall have been urged before the appropriate officer of customs or unless there was reasonable grounds for failure so to do. The finding of the Secretary of the Treasury as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the appropriate officer of customs, the court may order such additional evidence to be taken before the appropriate officer of customs and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Secretary of the Treasury may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Secretary of the Treasury shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended. The commencement of proceedings under this subsection shall, unless specifically ordered by the court, operate as a stay of the Secretary of the Treasury's order.

* * * * *

TRADE ACT OF 1974

TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT
COMPETITION

SUBCHAPTER C—GENERAL PROVISIONS

§ 250. Judicial review

(a) A worker, group of workers, certified or recognized union, or an authorized representative of such worker or group, aggrieved by a final determination by the Secretary under the provisions of section 223 (19 USCS § 2273) may, within 60 days after notice of such determination, file a petition for review of such determination with the United States [court of appeals for the circuit in which such worker or group is located or in the United States Court of Appeals for the District of Columbia Circuit] *Court of International Trade*. The clerk of such court shall send a copy of such petition to the Secretary. Upon receiving such petition, the Secretary shall promptly certify and file in such court the record on which he based such determination.

(c) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. *The judgment of the Court of International Trade shall be subject to review by the United States Court of Customs and Patent Appeals as prescribed by the rules of the Court of Customs and Patent Appeals.* The judgment of the [court] *Court of Customs and Patent Appeals* shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code (28 USCS § 1254).

THE INTERNAL REVENUE CODE OF 1954

CHAPTER 76.—JUDICIAL PROCEEDINGS

SUBCHAPTER C.—TAX COURT

PART 1.—ORGANIZATION AND JURISDICTION

§ 7443. Membership

(d) *Expenses for travel and subsistence.*—Judges of the Tax Court shall receive necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are

now or may hereafter be applicable to the United States [Customs Court] *Court of International Trade*.

* * * * *

AN ACT To provide a name by which the Board of General Appraisers and members thereof shall hereafter be known, approved May 28, 1926

The Board of General Appraisers shall hereafter be known as the United States [Customs Court] *Court of International Trade*.

* * * * *

STATEMENT OF THE CONGRESSIONAL BUDGET OFFICE

Pursuant to the rules of the Senate and the Congressional Budget Act of 1974, the following is the cost estimate of the Customs Court of 1979, as prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., December 6, 1979.

HON. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 1654, the Customs Courts Act of 1979, as ordered reported by the Senate Committee on the Judiciary, December 4, 1979.

This bill expands the jurisdiction of the U.S. Customs Court, outlines procedures for actions brought in that Court, and changes its name to the Court of International Trade. In addition, the jurisdiction of the Court of Customs and Patent Appeals relative to the Court of International Trade is clarified.

Although this bill will result in a shift of some cases from district courts to the Court of International Trade, it is not expected to result in any significant additional cost to the government.

Sincerely,

Alice M. Rivlin, *Director*.

REGULATORY IMPACT STATEMENT

Rule 27 (6) (b) of the Standing Rules of the Senate requires that reports accompanying legislation contain an evaluation of the regulatory impact of the legislation.

The proposal will result in a shift of some cases from the district courts to the Court of International Trade. The Committee finds that no significant regulatory impact, as defined by rule 27 (6) (b) will result from these changes upon the enactment of the Customs Courts Act of 1979. Furthermore, since the bill primarily clarifies and revises the jurisdiction of the United States Customs Court, it will have insignificant impact on the personal privacy of affected individuals.